



भारत का राजपत्र The Gazette of India

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प्राधिकार से प्रकाशित
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सं. 45] नई दिल्ली, नवम्बर 6—नवम्बर 12, 2022, शनिवार/ कार्तिक 15—कार्तिक 21, 1944
No. 45] NEW DELHI, NOVEMBER 6—NOVEMBER 12, 2022, SATURDAY/KARTIKA 15—KARTIKA 21, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वाणिज्य एवं उद्योग मंत्रालय
(वाणिज्य विभाग)

नई दिल्ली, 3 नवम्बर, 2022

का.आ. 1119.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स टीसीआरसी इंस्पेक्शन प्राइवेट लिमिटेड-विशाखापत्तनम ब्रांच, डोर नंबर 24-1-4, पहला माला और दूसरा माला, रेट्रोफिट हाउस, थोम्पसॉस स्ट्रीट वन टाउन, पुराण डाकघर, वार्ड नंबर 25, ग्राम: विशाखापत्तनम मंडल, जिला: विशाखापत्तनम, पिन कोड 530001, (जिसे एतदपश्चात् उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की संख्या का.आ. 3975 तथा दिनांक 20 दिसम्बर, 1965 की अधिसूचना की संख्या का.आ. 3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट समूह-I, अथार्त लौह अयस्क, और मैंगनीज अयस्क और (समूह-II), अथार्त बैराइट्स को निर्यात से पूर्व निम्नलिखित

शर्तों के अधीन विशाखापत्तनम पत्तन, गंगावरम पत्तन और कृष्णापत्तनम पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क समूह- II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी, और;
- (ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यों का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी।

[फा. सं. के-16014/7/2022 - निर्यात निरीक्षण]

एम. बालाजी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 3rd November, 2022

S.O. 1119.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s TCRC Inspections Private Limited - Visakhapatnam Branch, Door No : 24 - 1 - 4, 1st And 2nd Floor , Retrofit House , Thompsons Street One Town Old Post Office, Ward - 25, Village Visakhapatnam (U) Mandal, Visakhapatnam District, Pin Code - 530001 Andhra Pradesh, (hereinafter referred to as the said agency), as an agency for a period of three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, (Group-I), namely, Iron Ore and Manganese Ore and (Group-II), namely, Barytes as specified, in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the official Gazette vide number S.O. 3975, dated the 20th December, 1965, and S.O.3978 , dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Visakhapatnam Port, Gangavaram Port and Krishnapatnam port subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965 and Export of Minerals and Ores – Group II (Inspection) Rules, 1965;
- (ii) the said agency, in performance of their function as specified in this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/7/2022-Export Inspection]

M. BALAJI, Jt. Secy.

विद्युत मंत्रालय

नई दिल्ली, 11 नवम्बर, 2022

का.आ. 1120.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन पावर ग्रिड कार्पोरेशन ऑफ इंडिया लिमिटेड के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है:

1. पावर ग्रिड कॉर्पोरेशन ऑफ इंडिया लिमिटेड,
400/220/132 केवी जी आई एस रंगपो उपकेंद्र,
पोस्ट-मामरिंग, रंगपो चेक पोस्ट,
दक्षिण सिक्किम-737132
2. पावर ग्रिड कॉर्पोरेशन ऑफ इंडिया लिमिटेड,
400 केवी बहरमपुर उपकेंद्र,
दक्षिणग्राम, पलसंडा मोड़,
नवग्राम, मुर्शिदाबाद,
पश्चिम बंगाल-742238

[फा. सं. 11011/06/9/2022-हिंदी]

जितेश जॉन, आर्थिक सलाहकार (प्रभारी रा.भा.)

MINISTRY OF POWER

New Delhi, the 11th November, 2022

S.O. 1120.— In pursuance of Sub Rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notify the following offices of Power Grid Corporation of India Limited under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi:

1. Power Grid Corporation of India Limited,
400/220/132 KV GIS Rangpo Substation,
Post-Mamring, Rangpo Check Post,
South Sikkim: 737132
2. Power Grid Corporation of India Limited,
400 KV Berhampore Substation,
Dakshingram, Polsonda More,
Navagram, Murshidabad,
West Bengal- 742238

[F. No. 11011/06/9/2022-Hindi]

JITHESH JOHN, Economic Advisor (In-Charge O.L.)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 11 जुलाई, 2022

का.आ. 1121.— औद्योगिक विवाद अधिनियम, 1047 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निर्देशक, विज्ञान इंडस्ट्रीज लिमिटेड, तरिकेर, के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, कर्नाटक कॉफी क्योरिंग एंड जनरल वर्क्स यूनियन, कर्नाटक, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 06/2021) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.07.2022 को प्राप्त हुआ था।

[सं. एल-42011/72/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st October, 2022

S.O. 1121.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2021) of the Central Government Industrial Tribunal cum Labour Court – I New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Vignyan Industries Limited, Tarikere and The President, Karnataka Coffee Curing and General Workers Union, Karanata, which was received along with soft copy of the award by the Central Government on 08.07.2022.

[No. L-42011/72/2021- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 19th MAY 2022

PRESENT : DIPTI MOHAPATRA

Presiding Officer (i/c)

Camp Court, Bengaluru

C R No. 06/2021**I Party**

The President, Karnataka Coffee Curing and
General Workers union, Tamil Colony,
Chikmagalur – 577 101.

II Party

The Director,
Vignyan Industries Limited,
TARIKERE – 577 228.

Appearances:

I Party : **Workmen**
II Party : **Ramesh Babu,**
Head of VIL

1. The Government of India, Ministry of Labour vide order No. 42011/72/2021-IR(DU) dated 27.08.2021 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as “The Act”) (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

“Whether the demand of Sh. Raju S K and 10 others (list attached) raised through Karnataka Coffee Curing and General Workers Union vide letter dated 11.02.2021 for regularization of their services by the management of M/s. Vignyan Industries Limited Tarikere with effect from the date mentioned against each in letter dated 11.02.2021, and grant all consequential benefits from the date of entitlement is proper, legal and justified? If yes, to what relief the disputants are entitled to? What other directions, if any, are necessary in the matter?”

2. A little reference to the back drop needs mention that after receipt of the reference from the appropriate government taken to file and registered as C R No. 06/2021. Due notices were issued to both the parties for appearance and present their case fixing the date to 03.01.2022. On that day none of the parties appeared resulting further adjournment to 11.03.2022. In between on 24.01.2022 all the 11 members of the 1st Party Union as per the schedule were present along with Manager – HR of the 2nd Party made their appearance and filed a Joint Memo enclosed with the Copy of Settlement executed by the parties dated 29.09.2021 regarding the fact that they have resolved their dispute before the Conciliation Officer. The signatures of all the 11 members of the 1st Party and Manager-HR were obtained. The case was listed for hearing of both parties during the camp court held on 18.05.2022.

3. While sitting to adjudicate the matter in hand it is found that the parties elaborately discussed the fact leads to their settlement. The Joint Memo is reproduced as follows:

“1) The above dispute raised by I Party is for and on behalf of 1. Shri Raju S K, 2. Shri Vinay Kumar M 3. Shri Shrinath Naik T P 4. Shir Umesh M 5. Shri Naveen B M 6. Shri Naveen Kumar B 7. Shri Hareesha T R 8. Shri Girish N T 9. Shri Girisha S 10. Shri Mohan D & 11. Shri Pradeepoa P (the Applicants), who were members of the I Party Union, praying to

regularize the services by the II Party and to grant all consequential benefits from the date of entitlement. Having failed the conciliation, the Government of India referred the dispute for adjudication to this Hon'ble Tribunal vide reference letter dated 27.08.2021 and the same is pending in the above reference.

2) The II Party is under voluntary liquidation and the same has been approved by Cabinet committed on Economic Affairs (CCEA), Govt. of India and Notices as required under Industrial Disputes Act 1947, were served on all the stake holders. The II party has appointed the liquidator and the winding up and closure of the establishment of VIL is in progress and also is in the process of settlement of employee related issues.

3) The II Party and recognized Union of the II party i.e Vignyan Industries Mazdoor Sangh (VIMS) had discussions regarding resolving all the employee related issues and in the meeting held on 23.09.2021 settlements had been reached. Consequently, the Parties had entered into a Memorandum of Settlement (MoS) dated 29.09.2021 under Section 12(3) r/w 18(3) of the Industrial Disputes Act in the presence of Conciliation Officer and Asst. Labour Commissioner (C), Mangaluru. As per the said MoS, VIMS had requested the Management for providing employment in BEML for the Applicants herein and Management had agreed to look into the same. As per the said MoS, the entire disputes between the parties were fully and finally settled. Further, the parties had mutually agreed that no dispute would be raised in future on terms settled and agreed to withdraw the court cases / litigations initiated by them against the II Party to enable the II Party to complete the terms of settlement. A copy of the said MoS dated 29.09.2021 is produced herewith and marked as Annexure-A.

4) The Applicants herein had adopted the said MoS and undertaken to abide by the terms of MoS. In terms of the MoS, the Applicants have been given employment in BEML. As a consequence, the dispute raised in the above said reference has become non-est and infructuous.

5) In view of the facts stated above, the Applicants herein have voluntarily filed their individual applications dated 05.10.2021 before this Hon'ble Tribunal praying to delete their names from the party array / dispute and submitted that they have withdrawn their membership from the I Party Union and enclosed their letter of resignation from the I Party Union. Copies of the said withdrawal letters dated 05.10.2021 submitted by the Applicants herein are produced and marked as Annexure-B.

6) Since the disputes raised by the Applicants herein have been settled, there is no need to continue with the above reference any longer.

7) Therefore, the Applicants herein and II Party most respectfully prays that this Hon'ble Court may be pleased to take this Joint Memo on record and dismiss the dispute as settled out of court and to pass such other orders as may be deemed fit in the interest of justice and equity."

4. The Memorandum of Settlement under Section 12(3) r/w 18(3) of ID Act since enclosed with the Joint Memo is taken into Judicial Consideration. The Form H speaks about the short recital of the case, the second page discloses the terms of the settlement arrived by both the parties. It reveals that the 1st Party voluntarily entered into the settlement which was found to have been executed before the Conciliation Officer. Besides the 1st Party members expressed that they have no further claim as against the 2nd Party in view of the settlement dated 29.09.2021.

5. Since all the 1st party workmen (11 members) reported withdrawal of membership from the Union and agreed upon the settlement, eventually there exist no Industrial Dispute between the parties for adjudication as referred.

AWARD

The reference is answered accordingly. The ID case stands dismissed in terms of the Settlement dated 29.09.2021.

DIPTI MOHAPATRA, Presiding Officer (i/c)

नई दिल्ली, 9 सितम्बर, 2022

का.आ.1122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साऊथ ईस्टर्न कोलफील्ड लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय बिलासपुर (छ.ग.) के पंचाट (संदर्भ संख्या 02/2016) को प्रकाशित करती है।

[सं. एल-22012/18/2016-आई.आर. (सीएम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th September, 2022

S.O. 1122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2016) of the Labour Court Bilaspur(CG) as shown in the Annexure, in the industrial dispute between the Management of South Eastern Coalfield Limited and their workmen.

[No. L-22012/18/2016- IR (CM-II)]

RAJENDER SINGH, Under Secy.

अनुबंध

न्यायालय-श्रम न्यायाधीश, अंतर्गत औद्योगिक विवाद अधिनियम श्रम न्यायालय, बिलासपुर (छ.ग.)

(पीठासीन-शहाबुद्दीन कुरैशी)

प्रक.क्र-02/आई.डी.एक्ट/रिफ./सी.जी.आई.टी./2016

संस्थित दिनांक- 07.04.2016

ईश्वर सिंह चंदेल

कैशियर, आर.सी.एम.सी. एण्ड

सेक्रेटरी एन.एफ.आई.टी.यू. सीपत रोड

जिला बिलासपुर छत्तीसगढ़ 495006

...प्रथम पक्ष

बनाम

दि चीफ मैनेजिंग डायरेक्टर

साऊथ ईस्टर्न कोलफील्ड लिमिटेड

एस.ई.सी.एल. एच.क्यू. सीपत रोड,

जिला बिलासपुर 495006

...द्वितीय पक्ष

प्रथम पक्ष द्वारा: श्री दीपक जायसवाल प्रतिनिधि

द्वितीय पक्ष द्वारा: श्री मनीष श्रीवास्तव वरिष्ठ प्रबंधक

अधिनिर्णय

(पारित दिनांक-11.07.2022)

1. इस अधिनिर्णय के द्वारा प्रथम पक्षकार ईश्वर सिंह चंदेल और द्वितीय पक्षकार चीफ मैनेजिंग डायरेक्टर एस.ई.सी.एल. के बीच औद्योगिक विवाद विद्यमान होने के कारण, सेक्शन आफिसर, गवर्नमेंट आफ इण्डिया/भारत सरकार, मिनिस्ट्री आफ लेबर/श्रम न्यायालय नई दिल्ली ने आदेश नं. एल-22012/18/2016-आई.आर.-(सी.एम.-II) नई दिल्ली दिनांक 02.05.2016 के द्वारा विवाद को, औद्योगिक विवाद अधिनियम 1947 (14/1947) के अंतर्गत, श्रम न्यायालय बिलासपुर को अधिनिर्णयार्थ सौंपा है, जिसकी अनुसूची इस प्रकार है:- Whether the action on the part of management to provide check off system to 4 nos. of recognized trade unions namely Sanyukta Koyla Mazdoor Sangh (AITUC), Koyla Mazdoor Sabha (HMS), Bhartiya Mazdoor Sangh (BMS), South Eastern Koyla Mazdoor Congress (INTUC) & not extending check off facility to RLMC (NFITU) & withholding the subscription amount and keeping in the custody of SECL management to the tune of Rs 72 Lakhs approximately is legal, appropriate and justified ? If not, what relief the concerned union is the dispute is entitled to ? का निराकरण किया जा रहा है।

2. प्रथम पक्ष की ओर से प्रस्तुत स्टेटमेंट आफ क्लेम का संक्षिप्त निवेदन यह है कि अनावेदक एस.ई.सी.एल. में चार श्रमिक संघों को, चेक आफ की सुविधा दे रहा है तथा आर.सी.एम.सी. भी पंजीकृत यूनियन है। संविधान की धारा 14, 16, 10 का उल्लंघन कर भेदभाव पक्षपात कर रहा है, जो आई.डी.एक्ट की धारा-2 आर.ए. के तहत

दण्डनीय है। भारत सरकार द्वारा जो अनुसूची प्रेषित किया गया है, उसमें दो अलग अलग विवाद है। एस.ई.सी.एल. भारत सरकार की कम्पनी है, जो संविधान के अनुच्छेद 12 के अंतर्गत राज्य के अंतर्गत आती है। कम्पनी के तात्कालीन कर्मचारी राधेश्याम जो जी.एम. आई.आर. तथा धोखाधड़ी कर, अपने पद का दुरुपयोग कर, फैक्स कर दिया था। उक्त फैक्स मैसेज को न्यायालय द्वारा QUSH किया गया था, जिसमें प्रबंधन सुप्रीम कोर्ट गई थी। माननीय उच्च न्यायालय ने आदेश को स्टेटस रखा है। प्रबंधक उक्त मामले से हमेशा गुमराह करती रही है कि मामला सबजूडिशियल है। न्यायालय द्वारा चेक आफ सिस्टम न दिया जाये। इंटक के अध्यक्ष संजीव रेड्डी के कहने से कि इंटक की सम्बद्धता समाप्त हो गई है, इसलिए चेक की पात्रता नहीं है। एस.ई.सी.एल./कोल इंडिया के अधिकारी अपने ही प्रचलित निर्णय को इस प्रकरण में लागू नहीं कर, भेदभाव व पक्षपात कर रहे हैं, जाे आई.पी.सी. की धारा 166-167 के तहत दण्डनीय है। इंटक एक अलग यूनियन है, जो क्रेनिंग लेन दिल्ली में ट्रेड यूनियन एक्ट के तहत 2007 में पंजीकृत हुई है। हमारे द्वारा चार यूनियन को चेक आफ देना तथा सेम एण्ड सीमिलर यूनियन को न देना अलग विवाद है। प्रतिद्वंदी यूनियन इंटक एस.ई.सी.एल. के कहने से आर.सी.एम.सी. के सदस्यों द्वारा भरे गये आपशन फार्म में काटी गई रकम 75 लाख रुपये को अपने पास रखकर कम्पनी, बैंक ब्याज एवं बिजनेस में उपयोग कर प्रतिवर्ष लाभ कमा रही है। दूसरी ओर आर्थिक पंगू बनाकर कम्पनी के विरुद्ध लंबित प्रकरणों में एडवोकेट न रख सके, यूनियन के कार्य बाधित हो सके। यूनियन द्वारा उपरोक्त गैरकानून कृत्य की जांच करने कोयला मंत्रालय को आवेदन किया था। तात्कालीन सी.एम.डी. निर्देशक कार्मिक जी.एम.आई.आर. के विरुद्ध अपराधिक प्रकरण करने रिपोर्ट डाली थी तथा क्रिमिनल सिविल प्रकरण दायर करने नोटिस दिया गया था, उच्च न्यायालय ने निर्णय यूनियन के पक्ष में दिया था, जिसमें कोयला मंत्रालय को 72 लाख रुपये का भुगतान करने का आदेश दिया है। अनावेदक ने भारत सरकार के कोड आफ डिसिप्लीन से मिलते जुलते नाम से कोड आफ कंडक्ट बना लिया है, जो पूर्णतः असंवैधानिक एवं गैर कानूनी है। अतः प्रथम पक्ष की ओर से प्रस्तुत आवेदन पत्र को स्वीकार किये जाने की कृपा की जावे।

3. द्वितीय पक्ष की ओर से स्टेटमेंट आफ क्लेम का विरोध कर, जवाब पेश करते हुए यह निवेदन किया है कि आवेदक द्वारा प्रस्तुत स्टेटमेंट आफ क्लेम संदर्भ तथ्यों के अनुरूप वर्णन नहीं है, इसलिए अनुतोष दिया जाना न्यायोचित नहीं है। संदर्भित अनुसूची में आवेदक आर.सी.एम.सी. (एनएफआईटीयू.) दर्ज है, जबकि स्टेटमेंट आफ क्लेम को उक्त यूनियन के द्वारा प्रस्तुत नहीं किया गया है। एस.ई.सी.एल. में चेक आफ सिस्टम का प्रावधान कोड आफ कंडक्ट के तहत प्रबंधन एवं केन्द्रीय श्रम संगठन से सम्बद्धता रखने वाले श्रम संघ के प्रतिनिधि द्वारा दिनांक 03.08.1994 को निर्मित किया गया था। कोड आफ कंडक्ट के अंतर्गत जो केन्द्रीय श्रम संगठन शामिल हुए हैं, वे इंटक, एचएमएस, बीएमएस, एटक एवं सीटू श्रमसंघ है। एन.एफ.आई.टी.यू. से सम्बद्धता रखने वाले कोई संगठन इसमें शामिल नहीं है। केन्द्रीय संगठन इंटक से सम्बद्धता रखने वाले आर.सी.एम.सी. यूनियन जो वर्ष 2006 में चेक आफ सिस्टम के अंतर्गत कर्मचारियों के वेतन से सदस्यता शुल्क की कटौती किया गया था, उक्त यूनियन के आंतरिक विवाद के कारण कटौती राशि संबंधित यूनियन के बैंक खाते में उक्त वर्ष नहीं जमा किये जाने के संबंध में आवेदक यूनियन आर.सी.एम.सी., (एन.एफ.आई.टी.यू.) को न देकर रोककर रखने का निर्णय लिया गया। केन्द्रीय सरकार द्वारा संदर्भित अनुसूची में 75 लाख राशि के संबंध में उल्लेख है कि जिसके संदर्भित विवरण व दस्तावेज आवेदक यूनियन आर.सी.एम.सी. (एन.एफ.आई.टी.यू.) द्वारा प्रस्तुत नहीं किया गया है।

4. द्वितीय पक्ष की ओर से आगे यह भी अभिवचन किया गया है कि उक्त विवाद भारत संघ समस्त मंत्रालय द्वारा अपने आदेश दिनांक 02.05.2016 के माध्यम से शेड्यूल के तहत प्रकरण न्याय निर्णयन हेतु प्रेषित किया गया है। आवेदक श्रम संघ के ट्रेड यूनियन एक्ट के तहत पंजीकृत श्रमसंघ नहीं है और न ही पंजीयन संख्या 22 से संबंधित विवाद माननीय उच्च न्यायालय छत्तीसगढ़ बिलासपुर में लंबित है। पंजीयन संख्या 22 से संबंधित विवाद माननीय उच्च न्यायालय बिलासपुर के समक्ष डब्ल्यू.पी. 3393/2005 भागवत प्रसाद दुबे एवं अन्य विरुद्ध पंजीयक श्रम संघ एवं अन्य लंबित है। राशि के भुगतान के संबंध में सही व्यक्ति/श्रम संघ का निर्धारण नहीं होने के कारण चेकअप सिस्टम के अंतर्गत काटी गई राशि का भुगतान नहीं किया गया है और न ही अनावेदक द्वारा भेदभाव/पक्षपात किया जा रहा है। फैक्स आर्डर के विरुद्ध माननीय उच्च न्यायालय मध्यप्रदेश जबलपुर में डिविजन बेंच द्वारा पारित निर्णय

के संदर्भ में माननीय सर्वोच्च न्यायालय के एस.एल.पी. जो सिविल अपील में परिवर्तित हो गया है, लंबित है, जिसके संबंध में आवेदन एवं दस्तावेज माननीय न्यायालय के समक्ष दिनांक 09.08.2017 को प्रस्तुत किया गया है। माननीय सर्वोच्च न्यायालय द्वारा उक्त प्रकरण पर आदेश की तिथि पर चेक आफ फेसिलिटी आवेदक यूनियन को न दिये जाने की जो स्थिति है, वह अगले आदेश तक बरकरार रखने हेतु निर्देशित किया गया है। संबंधित यूनियन के आंतरिक विवाद के कारण ही सदस्यता शुल्क की कटौती राशि उक्त अवधि में भुगतान नहीं किया जा सका एवं परवर्ती अवधि में भी चेक आफ सिस्टम को लेकर न्यायालयीन प्रकरण जो माननीय सर्वोच्च न्यायालय में सिविल अपील के रूप में लंबित है एवं पंजीयन क्रमांक-22 से संबंधित विवाद को लेकर प्रकरण माननीय उच्च न्यायालय बिलासपुर में लंबित है, उक्त कारणों से उक्त राशि का भुगतान नहीं किया जा सका है। आवेदक द्वारा स्वयं स्वीकार किया गया है कि उसका संबंध इंटक फेडरेशन से था परन्तु उसमें यह उल्लेख नहीं है कि किस अवधि तक उनका इंटक फेडरेशन से संबंध था एवं किस तिथि से इंटक से हटाये गये हैं। आवेदक कम्पनी द्वारा चेक आफ सिस्टम में श्रम संघ की सदस्यता शुल्क कर्मचारी के वेतन से इकाई स्तर पर काटी जाती है एवं यूनियन के बैंक खाता में इकाई/क्षेत्रीय स्तर में संकलन पश्चात् भुगतान किया जाता है। आवेदक यूनियन द्वारा दावा राशि की ब्यौरा, इकाईवार सदस्यता सूची, बैंक खाता का विवरण एवं यूनियन द्वारा बैंक खाता संचालित करने की पदाधिकारियों के संबंध में कोई निर्णय दावा वर्ष 2006 से आज दिनांक तक संलग्न नहीं किया गया है। एस.ई.सी.एल. के मैनेजमेंट द्वारा प्रथम पक्ष को वर्तमान एवं भविष्य हेतु चेक आफ की सुविधा एस.ई.सी.एल. के पत्र क्रमांक एस.ई.सी.एल./बी.एस.पी./आई.आर./चेक आफ/एस.सी/22/75 दिनांक 02.04.2022 के माध्यम से प्रदान की जा चुकी है और वर्तमान में द्वितीय पक्ष एवं आरसीएमसी के बीच चेक आफ के संबंध में कोई विवाद लंबित नहीं है। अतः प्रथम पक्ष द्वारा प्रस्तुत स्टेटमेंट आफ क्लेम (आवेदन पत्र) निरस्त किये जाने की कृपा की जावे।

5. सेक्शन आफिसर, गवर्नमेंट आफ इण्डिया/भारत सरकार, मिनिस्ट्री आफ लेबर/श्रम न्यायालय नई दिल्ली के द्वारा आदेश नं. एल-22012/ 18/2016-आई.आर.-(सी.एम.-II) नई दिल्ली दिनांक 02.05.2016 के द्वारा निम्नलिखित अनुसूची को वाद प्रश्न के रूप में संदर्भित की गई है, जिसका निराकरण निष्कर्ष सहित मेरे द्वारा निम्नांकित रूप से किया जा रहा है।

क्र.	अनुसूची / वाद प्रश्न	निष्कर्ष
1.	Whether the action on the part of management to provide check off system to 4 nos. of recognized trade unions namely Sanyukta Koyla Mazdoor Sangh (AITUC), Koyla Mazdoor Sabha (HMS), Bhartiya Mazdoor Sangh (BMS), South Eastern Koyla Mazdoor Congress (INTUC) & not extending check off facility to RLMC (NFITU) ?	"हाँ" "उक्त सुविधा प्रदान की जा चुकी है"
2.	Withholding the subscription amount and keeping in the custody of SECL management to the tune of Rs 72 Lakhs approximately is legal, appropriate and justified ? If not, what relief the concerned union is the dispute is entitled to ?	"नहीं"

अनुसूची/वाद प्रश्न क्रमांक-1 का निष्कर्ष

6. समुचित सरकार के समक्ष प्रस्तुत विवाद जाने पर श्रम मंत्रालय द्वारा दिनांक 02.05.2016 को दो अनुसूची/वाद प्रश्न निर्मित कर इस न्यायालय को प्रकरण रिफर किया था तथा न्यायालय द्वारा दोनों वाद प्रश्न पर विचार किया जा रहा था, इसी दौरान द्वितीय पक्ष द्वारा अपने जवाब दावा में यह संशोधन किया गया कि द्वितीय पक्ष द्वारा प्रथम पक्ष को वर्तमान एवं भविष्य हेतु दिनांक 02.04.2022 के पत्र के माध्यम से चेक आफ की सुविधा प्रदान कर दी गई है तथा वर्तमान में प्रथम पक्ष एवं द्वितीय पक्ष के प्रकरण में चेक आफ की विवाद लंबित नहीं है। प्रथम पक्ष द्वारा इसके विपरीत कोई तथ्य नहीं लाया गया है। इसके अलावा प्रथम पक्ष ईश्वर सिंह ने अपने प्रतिपरीक्षण की कंडिका-20 में यह स्वीकार किया है कि दिनांक 02.04.2022 को प्रथम पक्ष अर्थात् राष्ट्रीय कालरी मजदूर कांग्रेस को द्वितीय पक्ष के द्वारा चेक आफ की सुविधा प्रदान कर दी गई है। साक्षी ने उसे प्रदर्श डी-1 के रूप में स्वीकार किया है। द्वितीय पक्ष के साक्षी मनीष श्रीवास्तव द्वारा भी उक्त चेक आफ की सुविधा प्रथम पक्ष को दिया जाना बताया है। उक्त समस्त तथ्यों से यह दर्शित होता है कि अनुसूची/ वाद प्रश्न क्रमांक-1 के संबंध में वर्तमान में

उभय पक्षों के मध्य कोई विवाद लंबित नहीं है। अतः ऐसी दशा में वाद प्रश्न क्रमांक-1 का निष्कर्ष न केवल "हाँ" में बल्कि "उक्त सुविधा प्रदान की जा चुकी है", के अनुसार निराकृत किया जाता है।

अनुसूची/ वाद प्रश्न क्रमांक-2 का निष्कर्ष

7. उक्त वाद प्रश्न में यह निष्कर्ष निकाला जाना है कि क्या द्वितीय पक्ष एस.ई.सी.एल. द्वारा सबक्रिप्शन की राशि लगभग 72 लाख रुपये अपने अभिरक्षा में रखा जाना विधिक अथवा उचित है अथवा नहीं? और यदि नहीं तो प्रथम पक्ष क्या अनुतोष की पात्रता रखते हैं? उक्त संबंध में प्रथम पक्ष द्वारा स्वयं ईश्वर सिंह चंदेल एवं दीपक जायसवाल महासचिव, राष्ट्रीय मजदूर कालरी संघ का साक्ष्य न्यायालय के समक्ष प्रस्तुत किया है। साक्षी ईश्वर सिंह चंदेल ने अपने न्यायालयीन कथन में बताया है कि द्वितीय पक्ष द्वारा उनकी यूनियन आर.सी.एम.सी. के साथ भेदभाव करता रहा है तथा आर.सी.एम.सी. के सदस्यों द्वारा अपने वेतन से कटवाये गये आर.सी.एम.सी. के चंदे की राशि को गैर कानूनी रूप से रोकने का आदेश जारी किया गया है। साक्षी के अनुसार चंदे की उक्त राशि विगत 10 वर्षों से एस.ई.सी.एल. अपने आधिपत्य में रखा हुआ है, जबकि उसे रोकने का अधिकारी किसी अथारिटी अथवा न्यायालय द्वारा नहीं दिया गया है। साक्षी ने अपने शपथ पत्र की कंडिका-14 में उक्त राशि बहत्तर लाख रुपये को मय ब्याज प्रथम पक्ष को दिलवाये जाने का अनुतोष दिये जाने का कथन किया है। इसी तरह प्रथम पक्ष के साक्षी दीपक जायसवाल ने भी अपने न्यायालयीन कथन में यह बताया कि द्वितीय पक्ष उनकी यूनियन आर.सी.एम.सी. के साथ भेदभाव व्यवहार करती रही है, जिसके तहत द्वितीय पक्ष ने आर.सी.एम.सी. के चंदे की राशि को रोक लिया गया है।

8. उक्त दोनों साक्षियों ने मौखिक रूप से यह तो कथन किया है कि द्वितीय पक्ष द्वारा मजदूरों के यूनियन हेतु काटी गई राशि को अपने आधिपत्य में रख लिया गया है। परन्तु प्रथम पक्ष के साक्षी ईश्वर सिंह चंदेल ने इस संबंध में किसी प्रकार का दस्तावेजी साक्ष्य न्यायालय के समक्ष प्रस्तुत नहीं किया है। हालांकि साक्षी दीपक जायसवाल ने न्यायालय के समक्ष माननीय उच्च न्यायालय के आदेश दिनांक 03.02.2009 की प्रमाणित प्रतिलिपि प्रदर्श पी-1, मिनिस्ट्री आफ लेबर एण्ड एम्प्लायमेंट को लिखा गया पत्र दिनांक 03.03.2016 की प्रति प्रदर्श पी-2, पदाधिकारियों के परिवर्तन संबंधी प्रपत्र की प्रमाणित प्रतिलिपि प्रदर्श पी-3 एवं पी-4, माननीय उच्च न्यायालय मध्यप्रदेश के पारित आदेश दिनांक 09.11.2010 की प्रतिलिपि प्रदर्श पी-5, माननीय उच्चतम न्यायालय के पारित आदेश की प्रमाणित प्रतिलिपि प्रदर्श पी-6 न्यायालय के समक्ष प्रस्तुत किया है परन्तु उक्त समस्त दस्तावेज में से प्रदर्श पी-1 एवं प्रदर्श पी-5 न्यायालय के प्रकरण का दस्तावेज हैं। इसी तरह प्रदर्श पी-2 क्षेत्रीय श्रम आयुक्त द्वारा लिखा गया पत्र है। उक्त दस्तावेजों से यह निष्कर्ष नहीं निकाला जा सकता कि द्वितीय पक्ष द्वारा मजदूरों से बहत्तर लाख रुपये की राशि उनके वेतन से काटी गई है। इसी तरह प्रदर्श पी-3 एवं प्रदर्श पी-4 के दस्तावेज भी इस संबंध में हैं कि प्रथम पक्ष ईश्वर सिंह चंदेल एवं दीपक जायसवाल यूनियन के पदाधिकारी हैं अथवा नहीं? अतः उक्त दस्तावेज से भी वाद प्रश्न क्रमांक-2 के संबंध में प्रथम पक्ष को कोई लाभ प्राप्त नहीं होता है।

9. एक ओर तो प्रथम पक्ष न्यायालय से यह अनुतोष चाह रहा है कि न्यायालय चेक आफ सिस्टम के तहत काटी गई राशि लगभग बहत्तर लाख रुपये प्रथम पक्ष को दिलवाई जावें वहीं दूसरी ओर प्रथम पक्ष के साक्षी दीपक जायसवाल द्वारा मुख्य परीक्षण की कंडिका-14 में यह बताया है कि दिनांक 28.11.2014 को भारत सरकार की ओर से आदेश दिया गया था कि सत्तर लाख रुपये की राशि यूनियन को वापस कर दी जाय, परन्तु उक्त आदेश का पालन नहीं किया गया। साक्षी दीपक जायसवाल ने अपने कथन की कंडिका-8 में यह भी बताया है कि दिनांक 03.02.2009 को माननीय उच्च न्यायालय द्वारा गुणदोष पर निराकरण करते हुए उक्त रकम को यूनियन के पदाधिकारियों को वापस करने का निर्देश दिया गया था। हालांकि आगे यह भी कथन किया गया कि यदि अनावेदक रकम नहीं देता है, तो यूनियन सक्षम न्यायालय में वाद प्रस्तुत करने हेतु स्वतंत्र रहेगा, भी न्यायालय ने निर्णित किया था, परन्तु साक्षी के उक्त कथन से यह दर्शित होता है कि माननीय उच्च न्यायालय द्वारा दिनांक 03.02.2009 को उक्त रकम के संबंध में निराकरण कर दिया गया था। यदि माननीय न्यायालय के आदेशानुसार उक्त राशि अदा नहीं की गई थी तो प्रथम पक्ष को चाहिए था कि वह अवमानना का प्रकरण प्रस्तुत करें अथवा अन्य कोई कार्यवाही करें। परन्तु प्रथम पक्ष द्वारा पुनः उक्त राशि को प्रदान किये जाने का वाद प्रस्तुत किया गया है।

10. साक्षी ईश्वर सिंह चंदेल ने अपने प्रतिपरीक्षण की कंडिका-17 में यह स्वीकार किया है कि चंदे को हड़पने तथा द्वितीय पक्ष द्वारा भेदभाव करने के संबंध में उसके द्वारा कोई दस्तावेज पेश नहीं किया गया है। इसी तरह साक्षी दीपक जायसवाल ने भी प्रतिपरीक्षण की कंडिका-25 में यह स्वीकार किया है कि उनके द्वारा ऑडिट रिपोर्ट एवं चेक आफ राशि का विस्तृत विवरण प्रकरण में प्रस्तुत नहीं किया गया है। हालांकि अंतिम तर्क के दौरान प्रथम पक्ष द्वारा अपने लिखित तर्क में यह तर्क किया गया है कि द्वितीय पक्ष द्वारा चेक आफ सिस्टम के तहत पैसा काटकर अपने पास रखने का कोई दस्तावेज तथा आर.सी.एम.सी. को चंदे की रकम दिये जाने का कोई साक्ष्य प्रस्तुत नहीं किया गया है, जोकि साक्ष्य अधिनियम की धारा 114-जी के तहत उपधारणा का आधार बनाती है। प्रथम पक्ष द्वारा लिखित तर्क में आदेश 8 नियम 3 एवं नियम 5 सी.पी.सी. का भी हवाला दिया गया कि द्वितीय पक्ष ने अपने जवाब दावा में विनिश्चय कथन नहीं किया है, जिससे उक्त तथ्य स्वीकृत तथ्य माने जायेंगे।

11. द्वितीय पक्ष के जवाब दावा का अवलोकन किया गया। द्वितीय पक्ष ने अपने जवाब दावा की कंडिका-8 में प्रथम पक्ष के अभिवचन से इंकार किया है तथा कंडिका-5 में इस तथ्य से भी इंकार किया है कि चेक आफ सिस्टम के अंतर्गत वेतन से काटी गई राशि को उनके द्वारा रोके जाने की मंशा का पोषण किया गया है। ऐसी दशा में केवल द्वितीय पक्ष के अभिवचन के आधार पर प्रथम पक्ष के पक्ष में निष्कर्ष नहीं निकाला जा सकता। विदित हो कि भारतीय साक्ष्य अधिनियम की धारा-101 के अनुसार जो न्यायालय से यह चाहता है कि किसी तथ्य के अस्तित्व पर न्यायालय विश्वास करें, इसी तरह धारा 102 के अनुसार यदि सबूत के अभाव में कोई वाद असफल हो जाएगा, तो ऐसी दशा में उस तथ्य को सिद्ध करने का भार उस व्यक्ति पर होता है, जो न्यायालय से उस तथ्य के अस्तित्व पर विश्वास करने का इच्छा रखता है अथवा उस व्यक्ति पर होता है, जिसके द्वारा सबूत न दिये जाने पर उसका वाद विफल हो जाएगा। प्रस्तुत प्रकरण में सबूत का भार प्रथम पक्ष पर था, परन्तु प्रथम पक्ष ने इस संबंध में किसी प्रकार का दस्तावेजी साक्ष्य प्रस्तुत नहीं किया है। माननीय उच्चतर न्यायालय द्वारा विभिन्न न्याय दृष्टांतों के माध्यम से यह सिद्धान्त प्रतिपादित किया है कि वादी कभी भी प्रतिवादी की असफलता के आधार पर कोई अनुतोष प्राप्त नहीं कर सकता, उसे अपना वाद स्वयं सिद्ध करना होता है।

12. प्रथम पक्ष के अनुसार मजदूरी संदाय अधिनियम की धारा-7 (टटट) के अनुसार व्यवसाय संघ अधिनियम 1926 के अधीन रजिस्ट्रीकृत किसी व्यवसाय संघ की सदस्यता के लिए नियोजित व्यक्ति संदेय फीस का संदाय करने के लिए, उस व्यक्ति के लिखित प्राधिकरण से कटौती की जावेगी। प्रथम पक्ष के उक्त तथ्य को द्वितीय पक्ष के साक्षी मनीष श्रीवास्तव द्वारा प्रतिपरीक्षण की कंडिका-17 में स्वीकार किया गया है कि साक्षी के उक्त स्वीकारोक्ति एवं अधिनियम से यह तो प्रमाणित होता है कि ट्रेड यूनियन के सदस्यों के वेतन से सबक्रिप्शन राशि काटी जाती है तथा यूनियन के खाते में जमा की जाती है। साक्षी ने प्रतिपरीक्षण की कंडिका 18 में यह भी स्वीकार किया है कि एस.ई.सी.एल. मुख्यालय द्वारा चेक आफ सिस्टम के तहत राशि जमा किये जाने हेतु सर्कुलर जारी किया गया है। साक्षी ने यह भी स्वीकार किया है कि जो राशि काटी जाती है, उसे यूनियन के खाते में जमा कर दिया जाता है। परन्तु केवल उक्त तथ्य के आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि प्रथम पक्ष के सदस्यों के वेतन से सत्तर लाख रुपये की राशि काटी गई है। हालांकि द्वितीय पक्ष के साक्षी मनीष श्रीवास्तव ने प्रतिपरीक्षण की कंडिका 21 में यह भी स्वीकार किया है कि प्रथम पक्ष के सदस्यों की चेक आफ के तहत रोकी गई समस्त राशि पर आर.सी.एम.सी. के यूनियन की अधिकारिता है परन्तु उक्त स्वीकारोक्ति से भी द्वितीय पक्ष द्वारा प्रथम पक्ष की सत्तर लाख रुपये की राशि रोककर रखे जाने के संबंध में स्पष्ट निष्कर्ष नहीं निकाला जा सकता।

13. प्रथम पक्ष द्वारा न तो अपने अभिवचन में यह स्पष्ट किया है कि वह न्यायालय से क्या अनुतोष चाहता है और न ही उस संबंध में कोई स्पष्ट अभिवचन किया है कि द्वितीय पक्ष द्वारा किस अधिनियम एवं किस धारा का उल्लंघन किया गया है। हालांकि न्यायालय के समक्ष हुए कथन में प्रथम पक्ष द्वारा सत्तर लाख की राशि प्रदान किये जाने का अनुतोष चाहा गया है परन्तु उक्त कथन बिना अभिवचन के किया गया कथन है। प्रथम पक्ष को चाहिए था कि वह यह अभिवचन करता कि द्वितीय पक्ष द्वारा उसके यूनियन के सदस्यों के वेतन से चंदे की राशि बहत्तर लाख रुपये काटी गई है तथा उसे प्रदान नहीं किया जा रहा है साथ ही काटी गई चंदे की राशि को दस्तावेजी साक्ष्य के माध्यम से न्यायालय के समक्ष प्रमाणित करना था परन्तु प्रथम पक्ष द्वारा न तो ऐसा स्पष्ट अभिवचन किया गया है और न ही द्वितीय पक्ष द्वारा काटी गई राशि को दस्तावेजी साक्ष्य से प्रमाणित किया है। हालांकि साक्षी दीपक जायसवाल ने अपने मुख्य परीक्षण की कंडिका-2 में उक्त संबंध में कथन किया है परन्तु उक्त कथन भी बिना अभिवचन का कथन है। प्रथम पक्ष द्वारा अपने अपने आवेदन के संबंध में किसी प्रकार का स्पष्ट दस्तावेजी साक्ष्य

प्रस्तुत नहीं किया है। किसी अन्य न्यायालय में लंबित अथवा निराकृत प्रकरण के आधार पर यह न्यायालय प्रथम पक्ष के पक्ष में आदेश नहीं कर सकती। यह और भी जबकि स्वयं प्रथम पक्ष के साक्षी दीपक जायसवाल के अनुसार काटी गई राशि सत्तर लाख रुपये को देने का आदेश माननीय उच्च न्यायालय द्वारा कर दिया गया है ऐसी दशा में वाद प्रश्न क्रमांक-2 का निष्कर्ष प्रथम पक्ष के पक्ष में नहीं निकाला जा सकता। अतः अनुसूची/वाद प्रश्न क्रमांक-2 का निष्कर्ष "नहीं" में निराकृत किया जाता है।

14. अतः प्रकरण में निम्नानुसार अधिनिर्णय पारित किया जाता है:-

1. प्रथम पक्ष द्वारा प्रस्तुत स्टेटमेंट आफ क्लेम खारिज किया जाता है।
2. उभय पक्ष अपना अपना वाद व्यय स्वयं वहन करेंगे।

अधिनिर्णय पारित, हस्ताक्षरित

शहाबुद्दीन कुरैशी, पीठासीन अधिकारी

नई दिल्ली, 3 नवम्बर, 2022

का.आ. 1123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एलआईसी ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और श्री यू. प्रभाकर राव बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद पंचाट (संदर्भ संख्या 111/2014) को प्रकाशित करती है।

[सं. एल-17012/32/2014-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 3rd November, 2022

S.O. 1123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (111/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and Shri U. Prabhakara Rao.

[No. L-17012/32/2014-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: - Sri V. Vijay Kumar, LL.M., Presiding Officer

Dated the 12th day of May, 2022

INDUSTRIAL DISPUTE No. 111/2014

Between:

Sri U. Prabhakara Rao,
C/o Srirangam Sitaratnam,
D.No.5-72, Transformer Sandu,
Sanivarapupeta,
Eluru. West Godavari Distt.

...Petitioner

AND

1. The Sr. Divisional Manager,
LIC of India, Divisional Office,
Jeevan Godavari, Morampudi,
Rajahmundry.

2. The Branch Manager,
LIC of India, Eluru Branch,
Eluru. W.G. Distt..

... Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : None

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 32/2014-IR(M) dated 7.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the removal from service of Sri U. Prabhakara Rao, Ex-Temp. Class-IV LIC of India, Eluru-II Branch w.e.f. 28.1.2013 is legal and justified? If not, what other relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 111/2014 and notices were issued to the parties concerned and the Petitioner entered appearance. The workman did not file claim statement. The management remained ex-parte.

2. It is seen that this matter is pending from 15.9.2014. There is no appearance for parties from 20.7.2018. The matter is pending for more than eight years without any progress in adjudication of the dispute. Even after eight years, the workman did not file the claim statement. It is felt that the workman/Petitioner is not interested in proceeding with the matter any further. Hence, it is felt that it is a proper case where a ‘No Claim’ award can be passed. As such, a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 12th day of May, 2022.

V. VIJAY KUMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL
Documents marked for the Petitioner
NIL
Documents marked for the Respondent
NIL

नई दिल्ली, 4 नवम्बर, 2022

का.आ. 1124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन रेलवे कैटरिंग एंड टूरिज्म कॉर्पोरेशन प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 2 नई दिल्ली के पंचाट (संदर्भ संख्या 101/2020) को प्रकाशित करती है।

[सं. एल-12025/01/2022-आई आर (बी-1)-10]

ए. के. यादव, अवर सचिव

New Delhi, the 4th November, 2022

S.O. 1124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2020) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court II New Delhi* as shown in the Annexure, in the industrial dispute between the management of Indian Railway Catering & Toursim Corporation and their workmen.

[No. L-12025/01/2022- IR(B-1)-10]

A.K YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 101/2020

Date of Passing Award- 20.10.2022

Between:

Shri Sanjay Kumar,
S/o Shri Ram Mehar,
R/o House No. 895-C/31, Ward No.8,
Mehrauli, New Delhi-110030.

Through- The Secretary, Delhi Labour Union,
Agarwal Bhawan, G T Road, Tis Hazari, Delhi-110054.

... Workman

Versus

The Chairman cum Managing Director,
Indian Railway Catering & Tourism Corporation,
Corporate Office:- B-148, 11th Floor, Statesman House,
Barakhamba Road, New Delhi-110001.

... Management

Appearances:-

Shri N Bhusan (A/R) : For the claimant

None for the management (A/R) : For the Management

AWARD

This is an application filed by the claimant invoking the provision of sec 2A of the ID Act 1947, wherein he has challenged the order of Termination of his service, describing the action of the respondent as illegal, arbitrary and harassing.

As stated in the claim petition, the claimant Sanjay kumar had joined the service of the respondent in September 2006 as an apprentice to discharge the duty of Food and Beverage Service Attendant. In April 2009, his service was regularized in the post of Food and Beverage Service Attendant/W-1. For his satisfactory performance, in 2012, he was given promotion to the post of Food and Beverage Service Attendant/W-2 and working at IST/ITCTC/NRC. On 12.02.2015, he was orally informed by the supervisor Mr. Hitesh Sharma to report for duty at the cafeteria in the 5th floor of Ministry of Corporate Affairs, Shastri Bhawan, New Delhi. On the same day the claimant reported at his new place of duty and was assigned the duties to be performed. When he was discharging his duties in the cafeteria, on 16.06.2015, the then DGM, NRP called him to his office and asked how he is working in the cafeteria at Shastri Bhawan without any order of transfer. On hearing the explanation offered by the claimant with regard to the oral instruction of the supervisor, the DGM, NRP, on 23.06.2015 gave a written communication to the claimant to the effect that his place of duty is ISTM/IRCTC/NRC. This letter was received by the claimant on 27.06.2015 and immediately thereafter i.e on 29.06.2015, he reported for duty to one Mr. Jai Singh, supervisor of ISTM/IRCTC/NRC and worked there till 14.07.2015 as Food and Beverage Service Attendant, when the supervisor Mr. Jai Singh again verbally instructed him to join his duty in the base kitchen, New Delhi Railway Station. In view of his past experience, the workman asked for a written order of his relocation. Instead of giving any such written order, the supervisor Mr. Jai Singh took the claimant in his car to the base kitchen on 14.07.2015. There, instead of assigning duty, the workman was asked to proceed on leave for 8-9 days during which the written order of his transfer will be communicated to him. The workman being left with no other option, proceeded on leave as advised. But to his astonishment, no written order of transfer was communicated as assured by the supervisor Jai Singh. On 24.07.2015, he visited his earlier place of posting i.e ISTM/IRCTC/NRC and asked for his order of transfer to the base kitchen. He was not even allowed to mark his attendance there. He made communication by writing letters to the higher authorities apprising as how he has been kept out of performing his duties. But the said communication was never replied by the Management. Instead, to his utter surprise, on 24.08.2015, the workman was placed under suspension by a written order issued from the office of the IRCTC, base kitchen

New Delhi. On 09.05.2016, the order of suspension was revoked and the workman was directed to report for duty immediately at the base kitchen, even though there was no written order of transfer to that place.

During the period of suspension the workman was served with a charge sheet dated 22.02.2016, alleging unauthorized absence. The workman had given a written reply dt16.04.2016, denying the charge. Though he had gone to the office of ISTM/IRCTC/NRC, again and again with the intension of joining duty, the authorities did not allow him. He was informed about appointment of Mr. Darshan Kumar as the inquiry officer of the domestic inquiry initiated against him. Though the workman was attending the inquiry on each date of the proceeding and requesting the inquiry officer to take note of the fact that he is not getting the subsistence allowance during the period of suspension, the same was never taken note of. He had last appeared before the inquiry officer on 18.10.2016 and there after the date of adjournment was never communicated to him. On the contrary, suddenly on 15.01.2017, he was informed about the closure of evidence and asked to submit the written submission if any. The workman wrote a letter requesting the communication to be provided in Hindi as he is not conversant with English. The request was not complied. Suddenly the work man received a communication dated 29.05.2019, according to which the charge against him was held proved and the penalty of dismissal from service was imposed on him. Before that final order the order of the inquiry officer was never served on him nor he was called upon to show cause against the order of the inquiry officer and the punishment proposed. Finding no other way, the workman has approached the labour commissioner for redressal of his grievance. Steps were taken by the conciliation officer for settlement of the dispute. But for the non co operative attitude of the Respondent no solution could be arrived and the failure report was communicated to the work man. Having no other remedy available, he approached this Tribunal for setting aside the order of dismissal on the ground that the inquiry was not fairly conducted and the punishment is an action of vindication, though he is innocent.

Notice of the proceeding was served on the Respondent by post being sent by this Tribunal. But the Respondent did not appear to participate in the proceeding. Thus by order dated 3rd January 2022, fresh notice was issued to the respondent as well as the claimant since there were enblock adjournments on account of COVID guideline and suspension of physical functioning of the Tribunal. In response to the said notice which were served on both the parties, the workman appeared on 21st March 2022, but the respondent did not appear. Hence by order dated 21.03.2022, the Respondent was proceeded exparte and the matter was adjourned for work man evidence. On the next date the workman testified as WW1 and produced several documents, which were taken on record as ww1/1 to ww1/40. These documents are the legal demand notice sent to the management copy of the postal receipt showing dispatch of the same the copy of the claim filed before the Labour Commissioner the reply filed by the management to the said claim, his appointment letter, office order dated 22.1.2015 several correspondence made by the claimant to the management copy of the leave application seeking leave from 15.07.2015 etc. the claimant besides filing the documents in his oral statement has fully supported the stand taken in the claim petition.

On perusal of the oral statement and the document which has been marked as WW1/4 and the reply given by the management to the claim of the workman before the commissioner the admitted facts are that the workman had joined into the employment of the management in the year 2006 and on 29.04.2009 his service was regularized. On 13.07.2015 he was asked to work in the base kitchen at Railway Station New Delhi. Whereas the claimant states that after reporting at the base kitchen he was asked to go on leave, the management in his written reply before the labour commissioner had stated that the claimant voluntarily proceeded on leave and thereafter instead of joining in the base kitchen he went to the office of NRC Unit/ ISTM with his father on 14.08.2015 and created nuisance. He interfered in the smooth functioning of the office for which he was warned. He went on alleging that his transfer is legal and did not join duty at the base kitchen. For the unauthorized absence charge was framed and he was proceeded with. At the end of the inquiry he was found guilty and major punishment was imposed.

This statement made by the respondent before the labour commissioner was never recorded in this proceeding for the non appearance of the management. Thus, the evidence of the claimant with regard to the illegal termination has remained unchallenged and rebutted. On the basis of the unchallenged evidence adduced by the claimant this tribunal comes to a conclusion that the management IRCTC had imposed a major punishment on the claimant without conducting a proper domestic inquiry against him. As such the punishment so imposed is liable to be set aside as illegal and arbitrary. Hence, ordered.

ORDER

The claim be and the same is allowed. It is held that the management IRCTC illegally terminated the service of the claimant without holding a proper domestic inquiry and imposed a major penalty on him by dismissing him from service. Accordingly it is held that the claimant is entitled to the relief of reinstatement with back wages and continuity of service. Accordingly it is directed that the claimant shall report at the base kitchen of IRCTC New Delhi railway station within one month from the date of publication of award and the management shall allow him to join the duty. The management is further directed to pay 50% of the wage for

the intervening period between the date of termination and reinstatement to the claimant and treat the said period as continuous service of the claimant and all other service benefits of the same period shall be granted to him. The accrued back wages shall be paid to the claimant within two months from the date of his joining on reinstatement without interest failing which the amount so accrued shall carry interest @ 6% per annum from the date of accrual and till the final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

20th October, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वरिष्ठ अधीक्षक, डाकघर जबलपुर क्षेत्र, जबलपुर (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री किशनलाल मेहरा, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/151/2000) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07/10/2022 को प्राप्त हुआ था।

[सं. एल-40012/234/2000-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1125.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/151/2000) of the Central Government Industrial Tribunal cum Labour—Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Senior Superintendent of Post Offices, Jabalpur Region, Jabalpur (M.P.) and Shri Kishanlal Mehra, worker, which was received along with soft copy of the award by the Central Government on 07/10/2022.

[No. L-40012/234/2000- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/151/2000

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Kishanlal Mehra,
C/o Deepchand Jharia,
Purana Dhobhighat,
Water Works Road,
PO:Bhita Temer,
Jabalpur (M.P.)

... Workman

Versus

The Senior Superintendent of Post Offices,
Jabalpur Region,
Jabalpur (M.P.)

... Management

AWARD**(Passed on 13-7-2022)**

As per letter dated 29/8/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/234/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Senior Suptd. Of Post Offices, Jabalpur Sambhag, Jabalpur in terminating the services of Sh. Kishanlal Mehra, Extra Departmental Delivery Agent w.e.f. 1/6/98 is legal and justified? If not, to what relief the workman is entitled .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respect statement of claim/defence.
2. The case of the workman as stated in his statement of claim is that he was employed by Management as Branch Dakpal and posted at Gangai Post Office we.f. 24-4-1992 till 2-6-1998 and had attained the status of permanent employee. He was issued a departmental charge sheet on the allegation of mis-appropriation of Rs.18,100/- which he collected from depositors and was required to deposit in their respective accounts. According to the workman, the inquiry was not conducted as per law. He was not given opportunity to defend himself. Charges were not proved during the inquiry and punishment of dismissal was disproportionate to the charges. The workman sought the relief of his reinstatement with all back wages. The workman was dismissed by way of punishment by Disciplinary Authority acting on the basis of inquiry report dated 2-6-1998. The Departmental appeal against dismissal was also rejected by Appellate Authority vide order dated 22-8-1999. A mercy petition by the workman sent to the Post Master General was also rejected vide order dated 22-8-2000.
3. According to the Management, the workman raised the amount from the account holder and did not deposit the amount in their accounts. During the inquiry, he admitted his guilt and deposited the amount along with interest. According to the Management the charges regarding misconduct were serious, hence the punishment imposed is proportionate to the charge. The Management has thus requested that the reference be answered against the workman.
4. The following issues were framed by my learned Predecessor vide his order dated 30-10-2006:-
 - (1) **Whether the departmental inquiry conducted by Management against the workman is proper and legal. If not, whether the Management is entitled to prove the misconduct of workman?**
 - (2) **To what relief if any, the workman is entitled?**
5. Issue No.1 was taken as preliminary issue by my learned Predecessor. Parties were required to lead their respective evidence on preliminary issue. The workman and Management examined their witness and proved the inquiry papers.
6. Vide his order dated 11-11-2013 my learned Predecessor held the departmental inquiry against the workman not legal and proper
7. The Management preferred a Writ Petition No.8800/2014 which was dismissed by Hon`ble Court vide order dated 5-10-2016.
8. Thereafter the Management was given a chance to prove the charges but no evidence at all was adduced by Management. The workman also did not adduce any evidence.
9. I have heard arguments of learned Counsel Shri Uttam Maheshwari for workman and Shri S.K.Mishra for Management and have gone through the record. The following issues come up for determination:-
 - (1) **Whether the Management is an industry as defined in Industrial Disputes Act,1947?**
 - (2) **Whether the charges against the workman are proved?**
 - (3) **Whether the workman is entitled to any relief?**
10. **ISSUE NO.1:-** Learned Counsel for the Management has referred to decision of Hon`ble Karnataka High Court in the case of the Superintendent of Post Offices, Vs. H.B.Shivanna passed in Writ Petition No.34051/2017. IN this case Hon`ble High Court of Karnataka held that since there are separate rules for recruitment, service and removal of extra departmental sub post-office master, Branch Post-office Master, delivery Agents and Stamp Vendors they are not workman as defined under Section 2(J) of the Industrial Disputes Act,1947. In the case in hand also, the workman is an extra departmental post master, hence in the light

of law laid down by Hon'ble High Court, he is held not to be a workman as defined under Section 2(J) of the Industrial Disputes Act, 1947. **Issue No.1 is answered accordingly.**

11. **ISSUE NO.2:-** As established above, the departmental inquiry has been held against law by my learned Predecessor and this order has been upheld by Hon'ble High court. Thereafter the burden was on management to prove the charge. The management has not led any evidence. According to the management, since the case is old the records and witnesses are not available as they have retired, dead or untraceable. Learned Counsel for the management has referred to the statement of the workman on oath recorded during the hearing of preliminary issue regarding legality of departmental inquiry, wherein he stated that he could not credit the amount in the account of account holders due to mistake as he was overburdened and thereafter he deposited the entire amount with interest. Accounting the learned counsel for Management, this confession of the workman is sufficient to prove him guilty for the charge of misconduct. I do not subscribe to this argument because his statement regarding his admission of his guilt will be taken as a whole. He also says that it was a bonafide mistake on his part. Hence, in these circumstances, the charge against the workman is held not proved. **Issue No.2 is answered accordingly.**

12. **ISSUE NO.3:-** IN the light of findings recorded on Issue No.1, the workman is held entitled to no relief. **The Issue No.3 is answered accordingly.**

13. On the basis of the above discussion, following award is passed:-

A. **The action of the management of Senior Suptd. Of Post Offices, Jabalpur Sambhag, Jabalpur in terminating the services of Sh. Kishanlal Mehra, Extra Departmental Delivery Agent w.e.f. 1/6/98 is held to be legal and justified.**

B. **The workman is held entitled to no relief.**

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 13/7/2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, लक्ष्मीबाई राष्ट्रीय शारीरिक शिक्षा संस्थान, रेस कोर्स रोड, ग्वालियर (म.प्र.), के प्रबंधन के संबद्ध नियोजकों और श्री आलोक दुबे, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/102/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11/10/2022 को प्राप्त हुआ था।

[सं. एल-42012/121/2018-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/102/2018) of the Central Government Industrial Tribunal cum Labour Court – Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Lakshmi Bai National Institute of Physical Education, Race Course Road, Gwalior (M.P.), and Shri Alok dubey, worker, which was received along with soft copy of the award by the Central Government on 11/10/2022.

[No. L-42012/121/2018- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/102/2018

Present: P. K. Srivastava, H.J.S..(Retd)Shri Alok dubey
S/o shri Rakesh Kumar dubey
Goshpura No.1,
Near Government School,
Hazira, Gwalior(M.P.)-474002

... Workman

Versus

The Director,
Lakshmibai National Institute of Physical Education
Race Course Road,Gwalior(M.P.)-474002

... Management

AWARD

(Passed on 5-4-2022)

As per letter dated 4-12-2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/121/2018-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Registrar, Lakshmibai National Institution of physical Education , Gwalior in terminating the services of workman Shri Alok Dubey w.e.f. 10-1-2008 is just and proper?if not , what relief the workman concerned is entitled to?” .”

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The workman never appeared inspite of service of notice on him and nor has filed any written statement of claim.
3. None appeared from the side of the Management and nor have they filed any written statement of defence.
4. The initial burden to prove their claim lies on the workman. He has not filed any statement of claim nor has he filed any documents or evidence in his support. The workman has miserably failed to prove his case. Hence this tribunal is constrained to decide the reference against the workmen.
5. Accordingly the reference is decided against the workman.
6. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 5-4-2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, देवास गेट, उज्जैन; सरकारी ठेकेदार और आपूर्ति, सी/ओ श्री मिलिंद हार्डिकर, उज्जैन के प्रबंधन के संबद्ध नियोजकों और श्री गोवर्धन लाल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/100/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11/10/2022 को प्राप्त हुआ था।

[सं. एल-40012/33/2015-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1127.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/100/2015) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General manager, Bharat Sanchar Nigam Limited, Dewas Gate, Ujjain; The Government Contractor & supplied, C/o Shri Milind Hardikar, Ujjain and Shri Gobardhan Lal, worker, which was received along with soft copy of the award by the Central Government on 11/10/2022.

[No. L-40012/33/2015- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/100/2015****Present:** P. K. Srivastava, H.J.S..(Retd)

Shri Gobardhan Lal
S/o shri Thawar Lal
R/o 25, New Lakshmi Nagar,
Behind Housing Board,
Sethi Nagar Chouraha
Ujjain (M.P.)

... Workman

Versus

1. The General manager,
Bharat Sanchar Nigam Limited,
Chamunda Mata Chouraha
Dewas Gate, Ujjain-456010
2. The Government Contractor & supplied
C/o shri Milind Hardikar,
Thekedar Milind Constructin,
233, mahashweta Nagar,
Ujjain-456010

... Management

AWARD**(Passed on 7-9-2022)**

As per letter dated 22/9/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/33/2015-IR(DU). The dispute under reference relates to:

“Kya shri Milind Hardikar, Malik Milind Constructin 233 Mahashweta Nagar Ujain dwara Shri Gobardhan Lal, s/o shri Thawar Lal ko lambe samay tak kam kara kar odyogek veveadh Adhiniyar 1947 ke dhara ke prav dhanao ke verudh denank 1-8-2013 se bina notice jya muafza deye kaam se betha denan nayayuichhit hai. Agar nahi to Avedak kes anutosh ka dhikar hai?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties appeared and have filed their respective statement of claim/defence.
2. In short the claim of the workman is that he was a daily wager and worked continuously for 240 days in every year including the year preceding the date of his termination. He has claimed that he was retrenched without giving him any notice or compensation, thus the termination of the workman is in violation of the Industrial dispute Rules, 1947 and is bad in law.
3. The Management has denied the claim that the workman ever completed 240 days in any calendar year in continuous engagement of the Management.
4. At the stage of evidence, the workman did not appear and nor was he present at the time of argument. He never filed any documents with respect of his claim.
5. On the other hand the Management filed affidavit of its witness Smt. Deepmati Shukla, Assistant General Manager, BSNL, Ujjain. The Management witness has supported the case of Management in its affidavit which is uncontroverted.

6. The Management was represented by its learned counsel Shri R.S.Khare. Since none was present for the workman at the time of argument, ex-parte argument of Management counsel was heard.
7. I have gone through the record.
8. **The reference is the point for determination in the case in hand.**
9. In the light of the above facts and circumstances stated above there is nothing on record to hold the claim of workman proved as the workman has miserably failed to discharge his burden in this case. Hence holding the claim of the workman not proved the reference deserves to be answered against the workman.
10. On the basis of the above discussion, following award is passed:-
 - A. The action of the management as mentioned in the reference is held to be just and proper.**
 - B. The workman is held entitled to no relief.**
11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 7-9-2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, भोपाल (म.प्र.); कनिष्ठ दूरसंचार अभियंता, ब्यावरा, राजगढ़- (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री इसरार अहमद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/53/2001) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11/10/2022 को प्राप्त हुआ था।

[सं. एल-40012/538/2000-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1128.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/53/2001) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Department of Telecommunication, Bhopal (M.P.); The Junior Telecom Engineer, Biaora, Rajgarh-(M.P.) and Shri Israr Ahmed, worker, which was received along with soft copy of the award by the Central Government on 11/10/2022.

[No. L-40012/538/2000- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/53/2001

Present: P. K. Srivastava, H.J.S..(Retd)

Sh.Israr Ahmed
S/o Abdul Aziz
R/o Kurawar, H.No.13, Kurawar
M & I Biaora,Rajgarh (M.P.)

Versus

... Workman

The Chief General Manager
Department of Telecommunication
Hoshangabad Road, M.P.Circle,
Bhopal (M.P.)-462001

2. The Junior Telecom Engineer
Biaora, Rajgarh (M.P.)

...Management

AWARD

(Passed on 26/7/2022)

As per letter dated 9/2/2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/538/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Junior Telecom Engineer, Biaora in terminating the services of Shri Israr Ahmed S/o Abdul Aziz w.e.f. April’94 is justified? If not, to what relief the workman is entitled? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

2. The case of the workman as stated in his statement of claim is that he was engaged as a helper by Management in the year January 1987 and continued till April 1994 when his services were terminated by the Management without any notice or compensation though he worked for more than 240 days continuously in every year including the year preceding the date of his termination. Thus his termination is violative of Section 25F of the Industrial Disputes Act, 1947. The workman has prayed that setting aside his termination, he be reinstated with back wages and benefits.

3. According to the management, the workman was engaged as a casual labour in the year 1987 by Management for specific period and specific work, with a condition that his services has come to an end automatically after completion of the work. He was not engaged on regular basis, against any vacant sanctioned post or by following rules and procedure of recruitment. He never worked for 240 days or more continuously in any year including the year preceding the date of his termination, hence, his dis-engagement without notice or compensation is not against law. The management has prayed that the reference be answered against the workman.

4. The Workman has filed his affidavit as his examination-in-chief. He has proved his Employment Exchange Card as Exhibit W-1. He has not been cross-examined by the Management. The management has filed earlier affidavit of Shailendra Surjan S.D.E. Administration but could not produce him for cross-examination, hence ultimately filed Affidavit of its witness Mohd. Feroz Ahmed, Assistant General Manager Legal and has been cross-examined by the workman.

5. I have heard arguments of Shri Arun Patel, learned counsel for the workman. None was present from the side of the Management. They were given opportunity to file written Argument, which they did not avail. I have gone through the record.

6. **The reference is the issue for determination in the case in hand.**

7. Before entering into any discussion on merit, Section 25B and Section 25F of the Industrial Disputes Act, 1947 is required to be produced here:-

Section 25 B:-

Definition of continuous service.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in

writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

8. The initial burden to prove his continuous engagement for 240 days or more in any year lies on the workman. The workman has examined himself and has stated that he worked for 240 days in every year till the date of his termination. He has not been cross-examined by Management. On the other hand, the Management witness, though has stated in his cross-examination in form of affidavit that the workman never worked continuously for 240 days or more in any year but in his cross-examination, he admitted that he was never posted in the office where the workman worked. He never saw the muster roll for the said period. He further states that he has prepared his affidavit on the basis of earlier affidavit kept in the file. Also that he did not produce any document to support that the workman had worked continuously for 240 days or more in any year.

9. Learned Counsel for the workman has referred to judgment of Hon. The Apex Court in the case of **Director Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda** AIR(2010) SC 1236 wherein it has been held that the workman was engaged on daily wage basis and he would have difficulty in accessing the office documents like muster roll etc. when the workman claims and disposes that he has worked for 240 days the burden shifts to employer to prove that he did not work for 240 days or more in that year.

10. In another judgment **Gauri Shanker Vs. State of Rajasthan**(2015) 12 SCC 754, it has been held by Hon'ble the Apex Court that withholding of documents i.e. muster roll by the employer may result into drawing adverse inference against the Management. In the light of law laid down by Hon'ble the Apex Court in the case cited above, the claim of the workman that he continuously worked for 240 days and more in every year including the year of his dis-engagement is held proved. Admittedly since no notice or compensation was given at the time of dis-engagement, the termination of the workman is held violative of the Section 25F of the Act.

11. In the light of the finding recorded above, the question arises as to what relief the workman is entitled since the workman was not appointed following any recruitment procedure against sanctioned vacancy, his reinstatement will not be legally admissible remedy. Accordingly he is held entitled to compensation keeping in view the tenure of his engagement and other facts and circumstances mentioned here in the case in hand, a lump sum compensation in lieu of his claims computed at Rs.50,000/-(Rupees Fifty Thousand only) will meet the ends of justice to which the workman is held entitled to recover within 30 days from the date of notification of the Award in official gazette failing which interest @ 6% per annum from the date of publication of Award till the date of receipt of Award.

12. On the basis of the above discussion, following award is passed:-

- A. The action of the management of Junior Telecom Engineer, Biaora in terminating the services of Shri Israr Ahmed S/o Abdul Aziz w.e.f. April'94 is held to be unjustified.
- B. The workman is held entitled to a lump sum compensation in lieu of his claims computed at Rs.50,000/-(Rupees Fifty Thousand only) to which the workman is held entitled to recover within 30 days from the date of notification of the Award in official gazette failing which interest @ 6% per annum from the date of publication of Award till the date of payment.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 26-7-2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1129.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, भोपाल (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और सचिव, भारत संचार निगम कर्मचारी संघ, जबलपुर, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/03/2006) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07/10/2022 को प्राप्त हुआ था।

[सं. एल-40012/105/2005-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1129.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/03/2006) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecom, Bhopal (M.P.) and The Secretary, Bharat Sanchar Nigam Karmachari Sangh, Jabalpur, which was received along with soft copy of the award by the Central Government on 07/10/2022.

[No. L-40012/105/2005- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/3/2006****Present:** P. K. Srivastava, H.J.S..(Retd)

Shri L.D. Sharma,
Secretary,
Bharat Sanchar Nigam Karmachari Sangh,
H.No.2/B-13, Sangram Sagar Colony,
Near Sagra Village,
P.O.Tilvaraghat, Jabalpur.

... Workman

Versus

The Chief General Manager,
Telecom,
Telecom Bhawan, Hoshangabad Road,
Bhopal (M.P.)

... Management

AWARD**(Passed on 22/7/2022)**

As per letter dated 16/1/2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/105/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Bharat Sanchar Nigam Ltd. Bhopal in terminating the services instead of regularising Shri Prahlad and Others (List enclosed) who were engaged during 1977 to 1990 and have reportedly worked for 240 days continuously is legal and justified? If not, to what relief the workman are entitled?” .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.
2. The case of the workman as stated in his statement of claim is that he and others who were engaged during 1977 to 1990 worked continuously for 240 days and more in every year. They were retrenched without issuing any notice or paying any compensation which is in violation of Section 25F of the Industrial Disputes Act, 1947. Since the Management did not seek any permission for retrenchment as provided under Section 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as the word 'Act') on this score also the termination is bad in law. Further, the Management did not follow the principles of last come and first go on this score also his termination is bad in law being violative of Section 25G & Section 25H of the Act.
3. The case of the Management in brief is that the workman never disclosed as to where and in which unit, at what place and under which office he has worked as claimed by him, hence in absence of specific details, the management is not in a position to put its specific case, however the management has specifically denied that the workman has worked for 240 days or more in any year. The management has further denied violation of Section 25N, 25G and 25H of the Act. Accordingly, the Management has prayed that the reference be answered against the workman.
4. The workman has filed his affidavit as his examination in Chief. He has been cross-examined by Management. He has proved Exhibit W-1.

5. The Management has filed affidavit of Shri N.K.Nandanwar, Assistant General Manager, Legal but he never appeared for cross-examination.
6. At the time of argument, none appeared for oral arguments. None of the parties filed any written statement. I have perused the record.
7. **The reference itself is the issue for determination in the case in hand.**
8. Before proceedings, Section 25B, 25F and 25G, 25H and Section 25N of the Industrial Disputes Act, 1947 requires to be reproduced below, which is as follows:-

Section 25 B:-

Definition of continuous service.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such

enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, *ibid.*, for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

9. The question now arises whether the workman has specifically proved his continuous engagement for 240 days and more in the year preceding the date of his dis-engagement. In his affidavit, the workman has stated that he was employed w.e.f. 16-12-1984 and his services were terminated from 20-4-1990. He was serving as a casual mazdoor and worked with the SDO Mandla and SDO Jabalpur under the BSNL and has continuously worked for a period of more than 240 days preceding the date of his termination. His services were terminated without any notice or compensation. In cross-examination he has admitted that he was never issued an appointment letter. He was also never issued a termination letter. He worked on muster roll. He has proved Exhibit W-1 which is list of co-workers attached with the reference order.

10. None of his co-workers have appeared nor have filed any statement of application. Hence only the self-serving statement of the workman Prahlad cannot be held sufficient to hold the factum of continuous employment of 240 days proved, keeping in mind that the initial burden to prove this fact is on the workman. Since the factum of continuous engagement of 240 days in the year preceding the date of his dis-engagement is not proved, his dis-engagement if any cannot be held violative of Section 25F or Section 25N of the Industrial Disputes Act, 1947 as regards violation of Section 25G and Section 25F, the affidavit of workman is silent on this point. Hence his case on this point is also held not proved.

11. Furthermore, according to the workman, he was dis-engaged in the year 1990. The reference has been made in the year 2006. The workman does not disclose as to when he raised dispute for the first time. The dispute is before this Tribunal after 16 years of alleged termination which is highly delayed, particularly when there is no explanation regarding this delay.

12. Additionally the reference does not disclose the specific date of engagement and specific date of alleged termination of the workman. There are as many as 90 workmen in the list attached with the reference. The workman Prahlad also does not disclose any specific date in his statement of claim/statement on oath, hence the reference is also vague and is held accordingly.

13. In the light of the above discussion, the reference needs to be answered against the workman.

14. On the basis of the above discussion, following award is passed:-

A. The action of the management of Bharat Sanchar Nigam Ltd. Bhopal in terminating the services instead of regularising Shri Prahlad and Others (List enclosed) who were engaged during 1977 to 1990 and have reportedly worked for 240 days continuously is held to be legal and justified.

B. The workmen are held entitled to no relief.

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 22/7/2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार संयुक्त सचिव, केन्द्रीय माध्यमिक शिक्षा बोर्ड इलाहाबाद; सचिव, केन्द्रीय माध्यमिक शिक्षा बोर्ड, दिल्ली के प्रबंधन के संबद्ध नियोजकों और श्री उमा शंकर पाण्डेय, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 32 of 2008) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2022 को प्राप्त हुआ था।

[सं. एल-42012/5/2008-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32 of 2008) of the Central Government Industrial Tribunal cum-Labour Court – Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Joint Secretary, Central Board of Secondary Education, Allahabad; The Secretary, Central Board of Secondary Education, Delhi and Shri Uma Shanker Pandey, worker which was received along with soft copy of the award by the Central Government on 11.10.2022.

[No. L-42012/5/2008- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 32/2008

Ref. No. L-42012/5/2008-IR(DU) dated 11.03.2008

BETWEEN :

Shri Uma Shanker Pandey S/o Shri Vijay Shanker Pandey
R/o 55/2A, Nihalpur,
Allahabad

AND

1. The Joint Secretary
Central Board of Secondary Education
Regional Office, 35-BMG Marg, Civil Lines
Allahabad.

2. The Secretary,
Central Board of Secondary Education,
2-Samudaik Centre, Preet Vihar,
Delhi-110092

AWARD

1. By order No. L-42012/5/2008-IR(DU) dated 11.03.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is:

"WHETHER THE CONTRACT BETWEEN THE MANAGEMENT OF CENTRAL BOARD OF SECONDARY EDUCATION AND THEIR CONTRACTOR M/S MANPOWER SERVICES AND SECURITY, WITH REGARD TO ENGAGEMENT OF SHRI UMA SHANKER PANDEY IS SHAM AND ONLY SMOKE SCREEN? IF YES, THEN WHETHER THE ACTION OF THE PRINCIPAL EMPLOYER, AND IF NOT, THEN WHETHER THE ACTION OF THE CONTRACTOR, IN TERMINATING THE SERVICES OF THE SAID WORKMAN W.E.F. 30.12.99 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. The case of the workman, Uma Shanker Pandey, in brief, is that he was engaged by the management on 02.04.1996 as Junior Assistant at initial pay of Rs. 4000/- per month, which was enhanced from time to time and was getting @ Rs. 3000/- per month at the time of his oral termination w.e.f. 31.12.1999. The workman has submitted that the M/s Manpower Security Services never supplied man power to the Principal Employer i.e. CBSE Board; rather the M/s Manpower Security Services did not participate in the conciliation proceedings and the name of M/s Manpower Security Services has been brought to the array of opposite parties just to defeat the claim of the workman. The workman has submitted that he worked continuously since his engagement for more than 240 days; however, his services have been terminated on 30.12.1999 without any notice/notice pay, charge sheet/enquiry or any retrenchment compensation or assigning any reason in violation to the provisions contained in Sections 25 F of the Industrial Disputes Act; and accordingly, he has prayed that his termination be declared illegal and he be reinstated with consequential benefits including full back wages.

4. The management of CBSE Board has filed its written statement denying the claim of the workman. The management has pleaded that the opposite party is not an industry as defined under Section 2(j) of the I.D. Act. The management has referred to the pronouncement of Hon'ble Supreme Court in AIR 1963, SC 1873. The management has submitted that the appointments are being made in accordance with the appointment rules; however, in exigencies of work, a contract agreement of work for a specified period was entered into with M/s Man Power Services & Security, Allahabad for completion of certain work and the said contract came to an end on completion of contract period. The management has stated that the persons engaged by the contractor for completing work assigned to it, though working in the office of the Board, were supervised, controlled and paid their wages by the contractor. It is submitted by the management that the services of the workman had never been terminated by it at any point of time; rather the services of the workman who was an employee of the contractor had come to an end with the completion of the contract period, therefore, the alleged termination of the workman does not attract violation of any of the provisions of Industrial Disputes Act, 1947 at the part of the Board. Accordingly, the management of the Board has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed his rejoinder wherein apart from reiterating the averments already made in the statement of claim it has submitted that the management has inducted name of the contractor just to deprive the workman of his legitimate rights; whereas he worked with the opposite parties under their direct control and was being paid salary by the opposite party itself. It has also been submitted by the workman that the so called contractor did not have any license to supply labourers in capacity of Office Assistant cadre; however, the contractor may supply labourers for security only.

6. The parties filed documentary as well as oral evidence in support of their rival pleadings. The workman examined himself whereas the management examined Shri Vijay Singh, Section Officer (Legal) in support of their case. The parties availed opportunity to cross-examine witness of each other apart from submitting oral as well as written submissions.

7. Heard learned counsel of the parties at length and perused entire evidence available on record.

8. The learned counsel of the workman has argued that the workman had been engaged by the management on 02.04.1996 as Junior Assistant and he worked accordingly upto 30.12.1999 when his services had been terminated orally without assigning any rhyme or reason or serving any notice or notice party, in

violation to the provisions contained in Section 25 F of the Act. It has also been contended by the learned counsel that the contractor viz. M/s Manpower Security Services never supplied man power to the Principal Employer i.e. CBSE Board; moreover, M/s Manpower Security Services did not participate in the conciliation proceedings and the name of M/s Manpower Security Services has been brought to the array of opposite parties just to deprive the workman of his legitimate rights. The authorized representative of the workman has also contended that the so called contractor did not have any license for labour supply as well and the contract/agreement, relied upon by the management is not in respect of Junior Assistant; hence, the same is sham and bogus. He has vehemently contended that the agreement is not specific and does not match with the period of engagement of the workman, therefore, the same is not applicable in respect of the workman. He has relied upon:

- (i) *Bhuvnesh Kumar Dwivedi vs Hindalco Industries Ltd. 2014 STPL (Web) 337 SC*
- (ii) *Hon'ble Supreme Court in Secretary, H.S.E.B. vs Suresh & Ors Etc. decided on 30.03.1999.*
- (iii) *Bhilwara Dugdh Utpadak Sahakari S. Ltd. vs. Vinod Kumar Sharma AIR (SCW)-2011-0-5288*
- (iv) *Hon'ble Supreme Court in G.B. Pant University of Agriculture & Technology, Pantnagar vs. State of Uttar Pradesh & ors. decided on 10.08.2000.*
- (v) *Hon'ble Supreme Court in Bharat Heavy Electrical Ltd vs State of U.P. and ors. decided on 21.07.2003.*
- (vi) *Bank of Baroda vs Ghemarbhai Harjibhai Rabari AIR (SCW)-2005-0-1817.*

9. In rebuttal, the learned counsel of the management has argued that the opposite party is not an industry as defined under Section 2(j) of the I.D. Act. The learned counsel has also submitted that the appointments in the opposite party establishment are being made in accordance with the appointment rules and the workman had never been appointed in consonance with the recruitment rules. The learned counsel has submitted that in exigencies of work, a contract agreement of work for a specified period was entered into with M/s Man Power Services & Security, Allahabad for completion of certain work and the said contract came to an end on completion of contract period and the persons engaged by the contractor for completing work assigned to it, though working in the office of the Board, were supervised, controlled and paid their wages by the contractor and their engagement automatically came to an end with the end of contract entered between the management of the Board and the contractor viz. M/s Man Power Services & Security, Allahabad. The authorized representative of the management has vehemently argued that the management of the Board never terminated the services of the workman at any point of time; rather the services of the workman who was an employee of the contractor had come to an end with the completion of the contract period, therefore, the alleged termination of the workman does not attract violation of any of the provisions of Industrial Disputes Act, 1947 at the part of the Board.

10. I have given my thoughtful consideration to the rival contention of parties and scanned entire evidence available on record in light thereto.

11. The management has raised preliminary objection regarding maintainability of the case with submissions that the CBSE Board is discharging sovereign function and accordingly it is not an 'industry' within the purview of the Section 2 (j) of the Act. Hon'ble Apex Court in *AIR 1978 Supreme Court 548 Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others* case; wherein it has been observed that

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

It is well known that the Education Boards across the country do the work of imparting education and they act as regulatory bodies to hold examination; and it charges the fee for the same. The opposite party was not discharging sovereign function at all; rather it is at par with other educational institutions and private universities. Also, it has indicated that the nature of work carried out by the CBSE Board well qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal propositions, I am of considered opinion that CBSE Board, is an industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

12. The management of the CBSE Board has also pleaded that the workman had been engaged through a contractor viz. M/s Man Power Services & Security, Allahabad and the payment was used to be made to the contractor who paid to the workman. However, the workman has pleaded that he has been paid by the management and the services for which agreement was entered into was not for office work rather it was for security purposes. The management has filed photocopy of agreement dated 01.01.1999 entered with the contractor in support of its contentions, Annexure – 2 to the written statement. A close scrutiny of the agreement dated 01.01.1999 reveals that the said agreement has been entered into between the CBSE Board and the contractor viz. M/s Man Power Services & Security, Allahabad for supply of specific services for specific period of time. The relevant para of the agreement dated 01.01.1999 is reproduced hereunder:

“Man Power Services & Security shall provide the number of security personnel as desired and required by the Board from time to time. Any reduction (with sufficient notice) and replacement in the staff provided by Man Power Services & Security can be done by the Board.

18. *The validity of this contract will be for a period of one year from 1st January, 1999 or date of commencement of work whichever is earlier to 31st December, 1999. The Agreement can be terminated at any time on giving a written notice of one month from either side PROVIDED THAT THE BOARD shall have the option to renew or continue this agreement on the same terms and conditions for a further period of one year, at a time from the date of expiry thereof.*

The charges to be paid for security personnel for 8 hours shift duty per month be as under:-

(a) Supervisor (1)	Rs. 2774.00
(b) Security Guards	Rs. 2058.53 each
(c) Sweeper	Rs. 2058.53
(d) Mali	Rs. 2058.53
(e) Electrician	Rs. 2774.00”

Thus, going through the above quoted portion of the agreement dated 01.01.1999, it is crystal clear that the agreement in question was for specific period i.e. from 01.01.1999 to 31.12.1999; whereas the alleged engagement of the workman was for their period 02.04.1996 to 30.12.1999. Likewise, the it is pleaded by the workman that he was engaged in clerical nature of work and working as Junior Assistant; but there is no such mention in the agreement under question. The management witness, Shri Vijay Singh during his cross-examination stated that “they did not obtain any license being principal employer”. The management has filed photocopy of attendance sheet for the month of May and June, 1998 which finds reference of workman at serial number 03, which indicates engagement of the workman with the opposite party Board. Also, there is no agreement on record for the period the attendance sheet has been filed by the management

13. Also, the workman has contended that the contractor did not had any license to supply labourers to the principal employer. There is no iota of evidence in this regard that either the Board had registration as principal employer or the contractor had any license to supply labourers to the principal employer. However, from pleadings and evidence relied upon by the parties, it is established that the workman was engaged through the contractor to carry out the work perennial in nature and that contract too was for limited period i.e. from 01.01.1999 to 31.12.1999 only; and in absence of any registration of the Board as principal employer or the contractor viz. M/s Man Power Services & Security, Allahabad had license for labour supply, making the so called contract between the Board and the so called contractor mere camouflage.

14. It may be correct that the Contract Labour (Regulation & Abolition) Act, 1970 was violated by the opposite party/CBSE. It may also be correct to assert that record preservation guidelines have not been duly followed by the CBSE authority before destruction of the records pertaining to the engagement of claimant, Uma Shanker Pandey in the establishment of the opposite party/CBSE; but it cannot be concluded that for above stated lapses Uma Shanker Pandey shall be accepted as employee of the CBSE as such conclusion will amount to back door entry into one Government Institution, which is also governed by Recruitment Rules a found from the record. Needless to say back door entry with regard to employment has been negated by the Judgement of the Hon’ble Supreme Court in the case of 2006 (4) SCC 1 Secretary, State of Karnataka & others vs Uma Devi.

15. It is seen that Shri Uma Shanker Pandey, claimant had worked under CBSE from 01.04.1996 to 30.12.1999 under such scenario, in view of the case laws, 2021 LLR 1035 (SC) Ram Manohar Lohia Joint Hospital & ors. vs. Munna Prasad Saini & another; and 2018 LLR 12 85 (SC) Management of Hindustan Machine Tools Limited vs. Ghanshyam Sharma, the claimant, Uma Shanker Pandey is entitled to get compensation instead of reinstatement, regularization with back wages.

16. The disengagement occurred about twenty years back and at this distant point of time adequacy of compensation cannot be computed with mathematical exactitude. The compensation can be reasonably quantified by guess work.

17. Having regards to these facts that the workman has worked as casual worker for 03 years and 09 months i.e. from 02.04.1996 to 30.12.1999 and he was getting Rs. 4000/- per month at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management of the C.B.S.E. is directed to pay lump sum amount of compensation only.

18. Accordingly, the management of the C.B.S.E. is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

19. The reference under adjudication is answered accordingly.

20. Award as above.

KANPUR.

31 August, 2022

Let two copies of this award be sent to the Ministry for publication.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मोहित मार्बल प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और श्री श्यामलाल मीणा बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 57/2015) प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Mohit Marble Pvt. Ltd. and Shri Shyamlal Meena.

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 57 सन् 2015 I.T.R(C)

श्री श्यामलाल मीणा—बनाम—मैसर्स मोहित मार्बल प्रा. लि.

13.08.2022

प्रार्थी अभिभाषक उपस्थित ।

विपक्षी के विरुद्ध कार्यवाही एकपक्षीय है ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक-अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

अतः प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है ।

सूचना प्रकाशनार्थ समझौता अधिकारी क्षेत्रिय श्रम आयुक्त अजमेर के पत्र क्रमांक एजे-5 (107)/2014-आरएलसी दिनांक 15 सितम्बर 2014 के कम में भारत-सरकार को भेजी जावे ।

पत्रावली फ़ैसल शुमार होकर दाखिल दफ़तर हो ।

सदस्य सचिव

गोपाल बिजोरीवाल, अध्यक्ष लोक-अदालत

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर, मेसर्स के. बी. मार्बल प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, जनजाति खान मज़दूर संघ बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 20/2015) को प्रकाशित करती है।

[सं. एल-28011/5/2015-आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, M/s K.B. Marble Pvt. Ltd. and The President, Janjati Khan Mazdoor Sangh.

[No. L-28011/5/2015- IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 20 सन् 2015 I.T.R(C)

अध्यक्ष, जनजाति खान मज़दूर संघ—बनाम—मैनेजर मेसर्स के.बी. मार्बल प्रा. लि,

अधिसूचना : L-28011/5/2015-IR(M) Dated 22.06.2015

13.08.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक-अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

अतः प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फ़ैसल शुमार होकर दाखिल दफ़तर हो ।

सदस्य सचिव

गोपाल बिजोरीवाल, अध्यक्ष लोक-अदालत

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर, मेसर्स ईनानी ग्रीन मार्बल प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, जनजाति खान मजदूर संघ बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 30/2015) को प्रकाशित करती है।

[सं. एल-28011/22/2015-आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, M/s Inani Green Marble Pvt. Ltd. and The President, Janjati Khan Mazdoor Sangh.

[No. L-28011/22/2015- IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 30 सन् 2015 I.T.R(C)

अध्यक्ष, जनजाति खान मजदूर संघ—बनाम—मैनेजर मेसर्स ईनानी ग्रीन मार्बल प्रा. लि.

अधिसूचना :L-28011/22/2015-IR(M) Dated 22.06.2015

13.08.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक-अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

अतः प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फ़ैसल शुमार होकर दाखिल दफ़्तर हो ।

सदस्य सचिव

गोपाल बिजोरीवाल, अध्यक्ष लोक-अदालत

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर, मेसर्स बिरानी मार्बल के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, जनजाति खान मजदूर संघ बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है।

[सं. एल-28011/42/2015-आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, M/s Birani Marble and The President, Janjati Khan Mazdoor Sangh.

[No. L-28011/42/2015- IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 14 सन् 2015 I.T.R(C)

अध्यक्ष, जनजाति खान मजदूर संघ—बनाम—मैनेजर मैसर्स बिरानी मार्बल,

अधिसूचना : L-28011/42/2015-IR(M) Dated 23.06.2015

13.08.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक-अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

अतः प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य सचिव

गोपाल बिजोरीवाल, अध्यक्ष लोक-अदालत

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आरएसएमएम उदयपुर के प्रबंधन के संबद्ध नियोजकों और जनरल सचिव, मजदूर संघ, उदयपुर बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 03/2011) प्रकाशित करती है।

[सं. एल-29011/25/2010-आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2011) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s RSMM, Udaipur and The General Secretary, Mazdoor Sangh, Udaipur.

[No. L-29011/25/2010- IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 03/2011 आई.टी.आर. केन्द्र

अनवान:- जनरल सचिव मजदूर संघ बनाम मै. आरएसएमएम

अधिसूचना नं. :- एल-29011/25/2010-आईआर(एम) दिनांक 28.06.11

निर्णय

31.08.2022

प्रार्थी व उनके अधिवक्ता अनु।

अप्रार्थी के अधिवक्ता उप।

प्रकरण 'No Instruction' मेंवकिल प्रार्थी दिनांक 30.08.2022 के अनुसार खारिज किया।

'No Dispute का Award' प्रकाशन हेतु भेजा जावे।

पत्रावली फ़ैसल शुमार होकर दाखिल दफ़्तर हो।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलसचिव, डॉ. हरि सिंह गौर विश्वविद्यालय, सागर, (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री संदीप बाल्मीकि, अध्यक्ष, डॉ. हरि सिंह गौर (छावनी) विश्वविद्यालय रोजगार संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/79/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/10/2022 को प्राप्त हुआ था।

[सं. एल-42011/90/2016-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1136.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/79/2016) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Dr. Hari Singh Gaur University, Sagar, (M.P) and Shri Sandeep Balmiki, President, Dr. Hari Singh Gour (Cent.) University Employ Union, which was received along with soft copy of the award by the Central Government on 26/10/2022.

[No. L-42011/90/2016- IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/79/2016**Present:** P.K. Srivastava, H.J.S.(Retd.)

Shri Sandeep Balmiki

President

Dr. Hari Singh Gour(Cent.)

University Employ Union

Resident of Purvayau Touri.,

Sagar, M.P. – 470001.

... Workman

Versus

The Registrar
Dr. Hari Singh Gaur University
Sagar, M.P. – 470003.

... Management

AWARD

(Passed on this 19th day of October-2022)

1. As per letter dated 19/09/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/90/2016-IR(DU). The dispute under reference relates to:

“Whether Shri Sanjeev Kumar Shrivastava who is performing the duties of Assistant Librarian-III Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar. Whether he is entitled for permanent classification with Class-III Wages, in the post of Assistant Grade-III/Assistant Librarian-III with Grade pay of Rs. 4200/- pm w.e.f 17/07/2009 along with arrears or not?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. The case of the workman Union, as put up in their statement of claim, is that is an Association of persons working for the protection of the interest of employees working for the University. It has authority to raise a dispute and contest the case on behalf of the workman who has is a member of the Union. The workman was initially appointed as Data Entry Operator and continued as daily wager/muster roll employee, grade three post since his initial appointment in the year 1997. He approached the Hon`ble High Court of M.P., when there was reduction of pay by way of a writ petition. Hon`ble High court directed the University to give benefit of minimum pay scale notified to the post. The University was declared a Central University vide Central University Act 2009. Before that, it was a State University as per provisions of M.P. Vishwavidyalaya Adhiniyam 1973. The workman was initially appointed as a Data entry operator on 10-5-1997 in the Department of Central Instrumental Lab and started discharging his duties as Assistant Librarian. Lastly, he has been shifted to department of Education on 2-8-2016. The said appointment was with the prior approval after creation of the post. The said workman has been continuously working since the date of his first appointment on May-1997 till date and discharging his duties allotted by the University.

3. According to the workman Union, the duties which were discharged by the applicant workman is of Class-iii post in the University. When the University was a State University, a resolution was passed by the Executive Council of the University in its meeting dated 1-5-2008 by exercising powers under Section 24 of the M.P. Vishwavidyalaya Adhiniyam, 1973. It was resolved that all the daily wagers/muster roll employees, employed will be entitled to minimum of pay and scale and allowances which is applicable to the Grades in which they were discharging their duties. The Executive council further adopted the recommendation of other pay recommendations of Teachers/Officers and employees vide its resolution dated 22-8-2009. The University was declared a Central University with the passage of notification of Central Universities Act, 2009. Section 4D of this Act provided that every person earlier employed by the University shall hold his office on same remuneration and terms and conditions and rules and privileges unless it is altered in consequence with the statutory rights. The Applicant Workman and the other similarly situated employees who were required to discharge duties equivalent to Class-III employees were illegally downgraded to Class-IV employees. It is further the case of the workman Union that the university has not recruited regular employees in Class-III and Class-IV for the last several years and this work is being discharged by applicant workman and other similarly situated workman even today also. Hence, the action of the University denying standard classification pay scale of Grade-III to employees and making payment to all at the same rate of pay irrespective of work discharged by them is illegal and arbitrary. It is in this back drop that Hon`ble High Court of M.P. directed the University to pay the applicant workman and similarly situated petitioners minimum pay in the scale of pay notified for the post against which they are discharging their duties vide its order dated 26-9-2011 passed in W.P.No.4520/2010. This order has been affirmed by Hon`ble the High Court vide its order dated 26-7-2013 passed in S.L.P.No.18342-43/2013. Further it has been stated that in order to circumvent the order of Hon`ble High Court and Hon. Supreme Court, the University has not carried proper classification and fitment. Since the applicant workman is discharging duties ever since March-2000 on the post of Assistant Librarian, he has not been given proper classification and fitment and deprived them of all the benefits which is violation of standard order applicable over the University. Accordingly, it has been prayed that holding the applicant workman entitled for permanent classification in Grade-III for the post of Assistant Librarian, Grade-II and III with Grade Pay Scale of Rs.4200/- per month w.e.f. completion of six months from the date of completion of six months of his application or since 17-7-2009 with arrears and interest.

4. IN the written statement of defence by the University, it has been pleaded that the allegation of the workman that he is discharging his duties on vacant and sanctioned post is incorrect. To obtain the status of a permanent employee a person must be employed in terms of statutory rules. The applicant workman was simply a daily wager/temporary employee who cannot hold the post unless he is appointment in terms of the Act and rules framed there under. An appointment may in violation of mandatory provisions of a statute is nullity. A persons appointed in such a manner cannot claim any benefit and rights regarding regularization and permanency in service in the light of Principle laid down in the case of **State of Karnataka & Another Vs. Uma Devi and Others**(2006) 4 SCC 1. As regards the order of Hon'ble High Court and Hon'ble the Apex Court directing minimum pay in the scale , it is the case of the Management that the this order has been complied with by the management of University. The Competent Authority in the University has constituted a Committee to examine the case of daily wagers/muster roll employees discharging the duties of Class-III and on the basis of the records available the daily wage and muster roll employees have been given pay entitled to Class-III employees and Dearness Allowance. Accordingly the management has requested that the reference be answered against the workman Union.

5. The workman Union has filed a rejoinder wherein it has denied the case of management and has further reiterated its case.

6. The workman has filed vide list 50 documents and has proved as Exhibit W01 to W-50, to be referred to as and when required. The workman Union has further filed and proved photocopy of marksheets and service related documents of the workman Sanjeev Kumar Shrivastav which are Exhibit W-51 to W-65, to be referred to as and when required.

7. The workman Union has filed affidavit as his examination in chief . Opportunity of cross-examination of this witness was given to management . They did not avail this opportunity, hence opportunity of cross-examination of this witness is closed.

8. The management has not examined any witness, rather it has filed two photocopy office orders dated 5-5-2014 and 2-11-2016 both admitted by workman Union, marked as Exhibit M1 to M2 respectively.

9. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workman Union. The management did not appear at the time of arguments. The workman Union has filed written arguments also which is part of the record. No written arguments has been filed by the Management. I have gone through the record as well.

10. On perusal of record in the light of arguments, the following points/issues come up for determination :-

- 1) **Whether the University Dr. Hari Singh Gaur University is an industry as defined under Section 2(J) and the applicant workman is a workman as defined in Section 2(s) of the of the Industrial Disputes Act,1947?**
2. **Whether the applicant workman was recruited as a daily wager/muster roll employee against sanctioned vacancy, following recruitment procedure and also whether he had the requisite qualification for the job he was recruited?**
3. **Whether the workman has been in continuous service of the management from the date of his first appointment till date?**
4. **Whether the applicant workman is entitled to be classified as Category-3/Class-III employee for the post of Assistant Librarian/Assistant Grade-III , if yes from which date?**
5. **Whether the applicant workman is entitled to relief if any?**

11. ISSUE NO.1:-

Before proceeding it is necessary to enumerate Section 2(J) and Section 2(S) of the Industrial Disputes Act,1947 as below:-

Section 2(S)-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.] 2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

12. In the case of Rajkumar Vs. Director Education Civil appeal No.1020/2011 Hon'ble the Apex Court has held that educational institution is industry as defined under Section 2(J) of the Act. As regards the University, Hon'ble the Apex court has referred to the Judgment of Seven Judges Bench in the case of Bangalore Water Supply & Sewerage Board Vs. R.Rajappa and Others , (1978) Scr (3) 207, the relevant portion is being reproduced as follows:-

"The issue whether educational institution is an 'industry', and its employees are 'workmen' for 4 (1997) 5 SCC 737 ,the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under: "The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations." (emphasis laid by this Court)

13. Hence, in the light of aforesaid judgment, the Dr.Hari Singh Gaur University non teaching staff is held to be workmen as defined under Section 2(S) and 2(J) and for this purpose, the University is held to be an Industry as defined under Section 2(J) of the Industrial Disputes Act,1947. Issue No.1 is answered accordingly.

14. ISSUE NO.2:-

According to the workman Union, the applicant workman was initially appointed in the year 1997 as a daily wager/muster roll employee. It is undisputed that up to 2009 till passing of Central Government University Act,2009, Dr. Hari Singh Gaur University was a State University governed by M.P. Vishwavidyalaya Adhiniyam,1973. Clause-II of the Act provides for recruitment of Class-III employees and Class-IV employees in the University. After perusal of the Rules regarding recruitment issued in the year 1982 by the then Registrar of the University Vide Notification No.ESST/MISC./20/4099 dated November 29,1982 under Section 52 of (4) of M.P.Vishwavidyalaya Adhiniyam ,1973, following is the procedure regarding recruitment on Class-III and Class-IV posts:-

Recruitment Procedure:

4.That when the Second Party University was a State University, a notification was issued in year 1982 where in it was provided for purposes of recruitment that:

- (i) In case of emergency, the work may be completed by appointment of a suitable persons on fixed emoluments;
- (ii). Clause 2 provides that recruitment of Class-III & IV would be done by open selection after advertisement or obtaining names form employment exchange;
- (iii). Clause 4 provides that recruitment by promotion/Selection shall be done on the basis of recommendation of 'Selection Committee', which shall interview the candidates and hold tests.
- (iv). Clause 4 provides that Registrar would nominate a 'Standing Selection Committee', which opt Head of Department as its member;
- (v). Clause 7 provides that whenever a permanent vacancy occurs or a new post is created, then, Registrar shall inform about it to the Head of the Department and later would inform the former about educational qualifications, if any, required for the said post:
- (vi). Appendix A to the notification prescribed that the for post of "Library Assistant Gr-II, degree in Library Science is the qualification, the candidate shall be graduate in Library science with relevant subject.

As regards the availability and sanctioned posts on the date of recruitment, the workman has stated in his affidavit as examination in chief that he was initially appointed on 10-5-1997 as the data entry operation in Central Instrumental Lab. The post was duly sanctioned and vacant and thereafter he was transferred to computer science application department. The RTI documents in the form of information notification of University which corroborates the aforesaid statement of the workman. The workman has filed and proved his educational qualification, service qualification and degrees which goes to show that he has acquired degree of masters in Library with PHD which goes to show that he was firstly qualified for the job and secondly that there is a provision for appointment of daily wagers/muster rolls as an emergency measure for this post and Thirdly, he has specifically stated in his affidavit as his examination in chief that a Selection Committee was formed which initially scrutinized his documents and interviewed him. This Committee was headed by the then Vice Chancellor, Registrar, the Head of the Department and other members. That he underwent that the recruitment procedure prevalent as per rules of recruitment for recruitment of daily wagers/muster roll employed by the University as mentioned in the M.P. Vishwavidyalaya Adhiniyam, 1973. Accordingly it is held that the workman in this case has successfully proved that he was appointed against sanctioned vacancy following the recruitment procedure in force at the time of his first recruitment and also that he was having requisite qualification for the post he was selected. **Issue No.2 is answered accordingly.**

15. **ISSUE No.3:-**

The workman has stated in his affidavit that since the date of his first appointment he is in continuous service of the University of course with some artificial breaks of one to two days Exhibit 3 to Exhibit 11 and Exhibit 12 to Exhibit 46 corroborate the case of the applicant workman when he has been in continuous service of the management as a daily wager/muster roll employed since the date of his first appointment till date. **Issue No.3 is answered accordingly.**

16. **ISSUE NO.4:-**

From the aforesaid discussion, the fact that there a vacancy for the post on which the applicant workman is working and that the applicant workman as requisite qualification of the post as well as that he has been recruited following the procedure established as mentioned above. Learned Counsel for the workman has referred to an Industrial Employment Standing Orders Act, 1946, Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 which deals with the classification of the workman referred to by learned counsel for the workman Union is being reproduced as follows:-

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1946

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy.CLCs(C) have been declared Appellate Authorities under the Act.

17. In the case of **M.P.State Road Transport Corporation Vs. Heeralal and Chhedalal & Others**(Manu/MP 0138/1974) decided by the 5 Judges Bench of Hon'ble High Court of M.P., it has been held

that in case of any discrepancy in the Standing Orders and Rules made by the Industrial Establishment, the former shall prevail. Hon'ble High Court has referred to another decision of Hon'ble Supreme Court in **U.P.State Electricity Board Vs. Hari Shankar Jain & another** (1997) SC 65 which has laid down the same prepositions, hence so far as the case of the applicant workman is concerned his rights will be governed by the standard Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 mentioned as above. This is also established on record documentary/statement of applicant workman for he has been discharging duties similarly to that done by the regular staff.

18. Reference of Section 25(T) and Scheduled V of the Unfair Labour Practice of the Industrial Disputes Act, 1947 which deal with prohibition of unfair labour practice requires to be mentioned here which are being reproduced as follows:-

[CHAPTER VC

UNFAIR LABOUR PRACTICES

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

19. It is now established that giving artificial break of one or two days at certain time establishes the fact that the management of University has adopted an unfair labour practice keeping in view the fact that the same work continued after break and the same persons were engaged for that break even after breaks. Reference of case law Secretary State of Karnataka and Uma Devi & Others 2006 AIR SCW has been taken by Management in its written statement of defence but since in the case in hand it has been proved that the applicant workman was not appointed through a back door entry rather he entered in the service after undergoing the recruitment procedure prevalent at that time, hence, the law laid down in that case does not apply to the case in hand. Judgement of Hon'ble the Apex Court in the case of **State of U.P. Vs. Pooranchand Pandey Appeal (civil) 3765 of 2000** and **Harinandan Prasad Vs. Food Corporation of India & Ors. Appeal (civil) 3765 of 2000** require to be mentioned in this respect. **Issue No.4 is answered accordingly.**

20. ISSUE NO.5:-

Hence in the light of the above, discussion and finding, the claim of the applicant workman is held proved and he is held entitled for permanent classification in Class-III for the post of Assistant Librarian, Assistant Gr-III with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to benefit of back wages and other service benefits, accordingly. **Issue No.5 is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

- A **Shri Sanjeev Kumar Shrivastava who is performing the duties of Assistant Librarian-III Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar is held to be unjustified in law and fact.**
- C. **The workman is held entitled for permanent classification in Class-III for the post of Assistant Librarian, Assistant Gr-III with Grade Pay admissible to him from the date 17-7-2009 and is also held entitled to benefit of back wages and other service benefits.**

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 19/10/2022

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1137.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलसचिव, डॉ. हरि सिंह गौर विश्वविद्यालय, सागर, (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री संदीप बाल्मीकि, अध्यक्ष, डॉ. हरि सिंह गौर (छावनी) विश्वविद्यालय रोजगार संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/78/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/10/2022 को प्राप्त हुआ था।

[सं. एल-42011/89/2016-आईआर-(डीयू)]

डी. के. हिमांशु, अवसर सचिव

New Delhi, the 7th November, 2022

S.O. 1137.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/78/2016) of the Central Government Industrial Tribunal cum Labour–Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Dr. Hari Singh Gaur University, Sagar, (M.P) and Shri Sandeep Balmiki, President, Dr. Hari Singh Gour(Cent.)University Employ Union, which was received along with soft copy of the award by the Central Government on 26/10/2022.

[No. L-42011/89/2016- IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/78/2016

Present: P. K. Srivastava, H.J.S.(Retd.)

Shri Sandeep Balmiki

President

Dr. Hari Singh Gour (Cent.)

University Employ Union

Resident of Purvyau Touri.,

Sagar, M.P. – 470001.

... Workman

Versus

The Registrar

Dr. Hari Singh Gaur University

Sagar, M.P. – 470003.

... Management

AWARD

(Passed on this 19th day of October-2022)

2. As per letter dated 19/09/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/89/2016-IR(DU). The dispute under reference relates to:

“Whether Shri Ravi Shankar Agarwal who is performing the duties of Lab Technician Assistant Grade III. being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar Whether he is entitled for permanent classification with Class-III Wages, in the post of Assistant Grade III/Lab Technician with Grade pay of Rs. 2400/- pm w.e.f 17/07/2009 along with arrears or not?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.
2. The case of the workman Union, as put up in their statement of claim, is that is an Association of persons working for the protection of the interest of employees working for the University. It has authority to raise a dispute and contest the case on behalf of the workman who has is a member of the Union. The workman was initially appointed as Lab Technician and continued as daily wagger/muster roll employee, grade three post since his initial appointment in the year 2006. He approached the Hon`ble High Court of M.P., when there was reduction of pay by way of a writ petition. Hon`ble High Court directed the University to give benefit of minimum pay scale notified to the post . The University was declared a Central University vide Central University Act 2009. Before that, it was a State University as per provisions of M.P. Vishswavidyaklaya Adhiniyam 1973. The workman was initially appointed as a Lab Technician on 6-2-2006 in the Department of Applied Micro Biology and Biotechnonology and started discharging his duties as Lab Technician. The said appointment was with the prior approval after creation of the post. The said workman has been continuously working since the date of his first appointment on 6-2-2006 till date and discharging his duties allotted by the University.
3. According to the workman Union, the duties which were discharged by the applicant workman is of Class-III post in the University. When the University was a State University. a resolution was passed by the Executive Council of the University in its meeting dated 1-5-2008 by exercising powers under Section 24 of the M.P. Vishwavidyalaya Adhiniyam,1973. It was resolved that all the daily wagers/muster roll employees, employed will be entitled to minimum of pay and scale and allowances which is applicable to the Grades in which they were discharging their duties. The Executive council further adopted the recommendation of other pay recommendations of Teachers/Officers and employees vide its resolution dated 22-8-2009. The University was declared a Central University with the passage of notification of

Central Universities Act, 2009. Section 4D of this Act provided that every person earlier employed by the University shall hold his office on same remuneration and terms and conditions and rules and privileges unless it is altered in consequence with the statutory rights. The Applicant Workman and the other similarly situated employees who were required to discharge duties equivalent to Class-III employees were illegally downgraded to Class-IV employees. It is further the case of the workman Union that the university has not recruited regular employees in Class-III and Class-IV for the last several years and this work is being discharged by applicant workman and other similarly situated workman even today also. Hence, the action of the University denying standard classification pay scale of Grade-III to employees and making payment to all at the same rate of pay irrespective of work discharged by them is illegal and arbitrary. It is in this back drop that Hon'ble High Court of M.P. directed the University to pay the applicant workman and similarly situated petitioners minimum pay in the scale of pay notified for the post against which they are discharging their duties vide its order dated 26-9-2011 passed in W.P.No.4520/2010. This order has been affirmed by Hon'ble the High Court vide its order dated 26-7-2013 passed in S.L.P.No.18342-43/2013. Further it has been stated that in order to circumvent the order of Hon'ble High Court and Hon. Supreme Court, the University has not carried proper classification and fitment. Since the applicant workman is discharging duties ever since 6-2-2006 on the post of Lab Assistant, he has not been given proper classification and fitment and deprived them of all the benefits which is violation of standard order applicable over the University. Accordingly, it has been prayed that holding the applicant workman entitled for permanent classification in Grade-III for the post of Lab Assistant, Grade-II and III from the date of completion of six months of his application or since 17-7-2009 with arrears and interest

4. IN the written statement of defence by the University, it has been pleaded that the allegation of the workman that he is discharging his duties on vacant and sanctioned post is incorrect. To obtain the status of a permanent employee a person must be employed in terms of statutory rules. The applicant workman was simply a daily wager/temporary employee who cannot hold the post unless he is appointment in terms of the Act and rules framed there under. An appointment may in violation of mandatory provisions of a statute is nullity. A persons appointed in such a manner cannot claim any benefit and rights regarding regularization and permanency in service in the light of Principle laid down in the case of **State of Karnataka & Another Vs. Uma Devi and Others**(2006) 4 SCC 1. As regards the order of Hon'ble High Court and Hon'ble the Apex Court directing minimum pay in the scale, it is the case of the Management that the this order has been complied with by the management of University. The Competent Authority in the University has constituted a Committee to examine the case of daily wagers/muster roll employees discharging the duties of Class-III and on the basis of the records available the daily wage and muster roll employees have been given pay entitled to Class-III employees and Dearness Allowance. Accordingly the management has requested that the reference be answered against the workman Union.
5. The workman Union has filed a rejoinder wherein it has denied the case of management and has further reiterated its case.
6. The workman has filed vide list 40 documents and has proved as Exhibit W01 to W-40, to be referred to as and when required. The workman Union has further filed and proved photocopy of marksheets and qualification related documents of the workman Ravi Prakash Agarwal which are Exhibit W-41 to W-45, to be referred to as and when required.
7. The workman Union has filed affidavit as his examination in chief. Opportunity of cross-examination of this witness was given to management. They did not avail this opportunity, hence opportunity of cross-examination of this witness is closed.
8. The management has not examined any witness, rather it has filed two photocopy office orders dated 5-5-2014 and 2-11-2016 both admitted by workman Union, marked as Exhibit M1 to M2 respectively.
9. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workman Union. The management did not appear at the time of arguments. The workman Union has filed written arguments also which is part of the record. No written arguments has been filed by the Management. I have gone through the record as well.
10. On perusal of record in the light of arguments, the following points/issues come up for determination :-

1)Whether the University Dr. Hari Singh Gaur University is an industry as defined under Section 2(J) and the applicant workman is a workman as defined in Section 2(s) of the of the Industrial Disputes Act, 1947?

2.Whether the applicant workman was recruited as a daily wager/muster roll employee against sanctioned vacancy, following recruitment procedure and also whether he had the requisite qualification for the job he was recruited?

3. Whether the workman has been in continuous service of the management from the date of his first appointment till date?

4. Whether the applicant workman is entitled to be classified as Category-III/Class-III employee for the post of Lab-Technician/Assistant Grade-III, if yes from which date?

5. Whether the applicant workman is entitled to relief if any?

11. ISSUE NO.1:-

Before proceeding it is necessary to enumerate Section 2(J) and Section 2(S) of the Industrial Disputes Act, 1947 as below:-

Section 2(S)-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

12. In the case of Rajkumar Vs. Director Education Civil appeal No.1020/2011 Hon’ble the Apex Court has held that educational institution is industry as defined under Section 2(J) of the Act. As regards the University, Hon’ble the Apex court has referred to the Judgment of Seven Judges Bench in the case of Bangalore Water Supply & Sewerage Board Vs. R.Rajappa and Others, (1978) *Scr* (3) 207, the relevant portion is being reproduced as follows:-

“The issue whether educational institution is an ‘industry’, and its employees are ‘workmen’ for 4 (1997) 5 SCC 737, the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under: “The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not ‘workmen’ and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching,

merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations.” (emphasis laid by this Court)

13. Hence, in the light of aforesaid judgment, the Dr.Hari Singh Gaur University non teaching staff is held to be workmen as defined under Section 2(S) and 2(J) and for this purpose, the University is held to be an Industry as defined under Section 2(J) of the Industrial Disputes Act,1947. **Issue No.1 is answered accordingly.**

14. ISSUE NO.2:-

According to the workman Union, the applicant workman was initially appointed on 6-2-2006 as a daily wager/muster roll employee. It is undisputed that up to 2009 till passing of Central Government University Act,2009, Dr. Hari Singh Gaur University was a State University governed by M.P. Vishwavidyalaya Adhiniyam,1973. Clause-II of the Act provides for recruitment of Class-III employees and Class-IV employees in the University. After perusal of the Rules regarding recruitment issued in the year 1982 by the then Registrar of the University Vide Notification No.ESTT/MISC./20/4099 dated November 29,1982 under Section 52 of (4) of M.P.Vishwavidyalaya Adhiniyam ,1973, following is the procedure regarding recruitment on Class-III and Class-IV posts:-

Recruitment Procedure:

4.That it is stated that when the Second Party University was a State University, a notification was issued in year 1982(Exhibit W-34), where in it was provided for purposes of recruitment that:

(i)In case of emergency, the work may be completed by appointment of a suitable persons on fixed emoluments;

(ii).Clause 2 provides that recruitment of Class-III & IV would be done by open selection after advertisement or obtaining names form employment exchange;

(iii).Clause 4 provides that recruitment by promotion/Selection shall be done on the basis of recommendation of ‘Selection Committee’, which shall interview the candidates and hold tests.

(iv). Clause 4 provides that Registrar would nominate a ‘Standing Selection Committee’, which opt Head of Department as its member;

(v).Clause 7 provides that whenever a permanent vacancy occurs or a new post is created, then, Registrar shall inform about it to the Head of the Department and later would inform the former about educational qualifications, if any, required for the said post:

(vi).Appendix A to the notification prescribed that the for post of “Lab Technician’ the candidate shall be graduate in science with relevant subject.

As regards the availability and sanctioned posts on the date of recruitment, the workman has stated in his affidavit as examination in chief that he was initially appointed on 6-2-2006 as the Lab Technician in the Department of Applied Microbiology and Biotechnology. The post was duly sanctioned and vacant. The RTI documents in the form of information notification of University which corroborates the aforesaid statement of the workman. The workman has filed and proved his educational qualification , service qualification and degrees which goes to show that he has acquired degree of masters in Sciencer with PHD which goes to show that he was firstly qualified for the job and secondly that there is a provision for appointment of daily wagers/muster rolls as an emergency measure for this post and Thirdly, that he under went that the recruitment procedure prevalent as per rules of recruitment for recruitment of daily wagers/muster roll employed by the University as mentioned in the M.P. Vishwavidyalaya Adhiniyam,1973.Issue No.2 is answered accordingly.

15. ISSUE No.3:-

The workman has stated in his affidavit that since the date of his first appointment he is in continuous service of the University of course with some artificial breaks of one to two days Exhibit 3 to Exhibit 11 and Exhibit 12 to Exhibit 45 corroborate the case of the applicant workman when he has been in continuous service of the management as a daily wager/muster roll employed since the date of his first appointment till date. **Issue No.3 is answered accordingly.**

16. ISSUE NO.4:-

From the aforesaid discussion, the fact that there a vacancy for the post on which the applicant workman is working and that the applicant workman as requisite qualification of the post as well as that he has been recruited following the procedure established as mentioned above. Learned Counsel for the workman has referred to an Industrial Employment Standing Orders Act,1946, Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 which deals with the classification of the workman referred to by learned counsel for the workman Union is being reproduced as follows:-

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1947

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy.CLCs(C) have been declared Appellate Authorities under the Act.

17. In the case of M.P.State Road Transport Corporation Vs. Heeralal and Chhedalal & Others(Manu/MP 0138/1974) decided by the 5 Judges Bench of Hon'ble High Court of M.P., it has been held that in case of any discrepancy in the Standing Orders and Rules made by the Industrial Establishment, the former shall prevail. Hon'ble High Court has referred to another decision of Hon'ble Supreme Court in U.P.State Electricity Board Vs. Hari Shankar Jain & another (1997) SC 65 which has laid down the same propositions, hence so far as the case of the applicant workman is concerned his rights will be governed by the standard Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 mentioned as above. This is also established on record documentary/statement of applicant workman for he has been discharging duties similarly to that done by the regular staff.

18. Reference of Section 25(T) and Scheduled V of the Unfair Labour Practice of the Industrial Disputes Act, 1947 which deal with prohibition of unfair labour practice requires to be mentioned here which are being reproduced as follows:-

[CHAPTER VC**UNFAIR LABOUR PRACTICES**

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

19. It is now established that giving artificial break of one or two days at certain time establishes the fact that the management of University has adopted an unfair labour practice keeping in view the fact that the same work continued after break and the same persons were engaged for that break even after breaks. Reference of case law Secretary State of Karnataka and Uma Devi & Others 2006 AIR SCW has been taken by Management in its written statement of defence but since in the case in hand it has been proved that the applicant workman was not appointed through a back door entry rather he entered in the service after undergoing the recruitment procedure prevalent at that time, hence, the law laid down in that case does not apply to the case in hand. Judgement of Hon'ble the Apex Court in the case of State of U.P. Vs. Pooran Chand Pandey Appeal (civil) 3765 of 2000 and Harinandan Prasad Vs. Food Corporation of India & Ors. Appeal (civil) 3765 of 2000 require to be mentioned in this respect. **Issue No.4 is answered accordingly.**

20. ISSUE NO.5:-

Hence in the light of the above, discussion and finding, the claim of the applicant workman is held proved and he is held entitled for permanent classification in Class-III for the post of Lab Technician, Assistant Gr-III with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to benefit of back wages and other service benefits, accordingly. **Issue No.5 is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

A Shri Ravi Prakash Agarwal who is performing the duties of Lab Technician-III Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar is held to unjustified in law and fact.

B. The workman is held entitled for permanent classification in Class-III for the post of Lab Technician Gr-III with Grade Pay Rs.2400/- admissible to him from 17-7-2009 and is also held entitled to benefit of back wages and other service benefits.

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 19/10/2022

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलसचिव, डॉ. हरि सिंह गौर विश्वविद्यालय, सागर, (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री संदीप बाल्मीकि, अध्यक्ष, डॉ. हरि सिंह गौर (छावनी) विश्वविद्यालय रोजगार संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/77/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/10/2022 को प्राप्त हुआ था।

[सं. एल-42011/88/2016-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1138.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/77/2016) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Dr. Hari Singh Gaur University, Sagar, (M.P.) and Shri Sandeep Balmiki, President, Dr. Hari Singh Gour (Cent.) University Employ Union, which was received along with soft copy of the award by the Central Government on 26/10/2022.

[No. L-42011/88/2016- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/77/2016****Present:** P.K. Srivastava H.J.S.(Retd.)

Shri Sandeep Balmiki
President
Dr. Hari Singh Gour (Cent.)
University Employ Union
Resident of Purvayau Touri.,
Sagar, M.P. – 470001.

... Workman

Versus

The Registrar
Dr. Hari Singh Gaur University
Sagar, M.P. – 470003.

... Management

AWARD**(Passed on this 19th day of October-2022)**

1. As per letter dated 19/09/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/88/2016-IR(DU). The dispute under reference relates to:

“Whether Shri Diwajti Shankar Sharma who is performing the duties of Store Keeper /Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar. Whether he is entitled for permanent classification with Class-III Wages, in the post of Assistant Grade III/Store Keeper with Grade pay of Rs. 2400/- pm w.e.f. 17/07/2009 along with arrears or not?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.
2. The case of the workman Union, as put up in their statement of claim, is that is an Association of persons working for the protection of the interest of employees working for the University. It has authority to raise a dispute and contest the case on behalf of the workman who has is a member of the Union. The workman was initially appointed as Store Keeper and continued as daily wager/muster roll employee, Grade-III post since his

initial appointment in the year 2004. He approached the Hon'ble High Court of M.P., when there was reduction of pay by way of a writ petition. Hon'ble High court directed the University to give benefit of minimum pay scale notified to the post. The University was declared a Central University vide Central University Act 2009. Before that, it was a State University as per provisions of M.P. Vishwavidyalaya Adhiniyam 1973. The workman was initially appointed as a Store Keeper on 24-11-2004 in the Department of Computer Science and application and started discharging his duties as Store Keeper. The said appointment was with the prior approval after creation of the post. The said workman has been continuously working since the date of his first appointment on 24-11-2004 till date and discharging his duties allotted by the University.

3. According to the workman Union, the duties which were discharged by the applicant workman is of Class-III post in the University. When the University was a State University, a resolution was passed by the Executive Council of the University in its meeting dated 1-5-2008 by exercising powers under Section 24 of the M.P. Vishwavidyalaya Adhiniyam, 1973. It was resolved that all the daily wagers/muster roll employees, employed will be entitled to minimum of pay and scale and allowances which is applicable to the Grades in which they were discharging their duties. The Executive council further adopted the recommendation of other pay recommendations of Teachers/Officers and employees vide its resolution dated 22-8-2009. The University was declared a Central University with the passage of notification of Central Universities Act, 2009. Section 4D of this Act provided that every person earlier employed by the University shall hold his office on same remuneration and terms and conditions and rules and privileges unless it is altered in consequence with the statutory rights. The Applicant Workman and the other similarly situated employees who were required to discharge duties equivalent to Class-III employees were illegally downgraded to Class-IV employees. It is further the case of the workman Union that the university has not recruited regular employees in Class-III and Class-IV for the last several years and this work is being discharged by applicant workman and other similarly situated workman even today also. Hence, the action of the University denying standard classification pay scale of Grade-III to employees and making payment to all at the same rate of pay irrespective of work discharged by them is illegal and arbitrary. It is in this back drop that Hon'ble High Court of M.P. directed the University to pay the applicant workman and similarly situated petitioners minimum pay in the scale of pay notified for the post against which they are discharging their duties vide its order dated 26-9-2011 passed in W.P.No.4520/2010. This order has been affirmed by Hon'ble the High Court vide its order dated 26-7-2013 passed in S.L.P.No.18342-43/2013. Further it has been stated that in order to circumvent the order of Hon'ble High Court and Hon. Supreme Court, the University has not carried proper classification and fitment. Since the applicant workman is discharging duties ever since March-2000 on the post of Store Keeper, he has not been given proper classification and fitment and deprived them of all the benefits which is violation of standard order applicable over the University. Accordingly, it has been prayed that holding the applicant workman entitled for permanent classification in Grade-III for the post of Store Keeper, Grade-II and III with Grade Pay Scale of Rs.2400/- per month w.e.f. completion of six months from the date of completion of six months of his application or since 17-7-2009 with arrears and interest.

4. IN the written statement of defence by the University, it has been pleaded that the allegation of the workman that he is discharging his duties on vacant and sanctioned post is incorrect. To obtain the status of a permanent employee a person must be employed in terms of statutory rules. The applicant workman was simply a daily wager/temporary employee who cannot hold the post unless he is appointment in terms of the Act and rules framed there under. An appointment may in violation of mandatory provisions of a statute be nullity. A persons appointed in such a manner cannot claim any benefit and rights regarding regularization and permanency in service in the light of Principle laid down in the case of **State of Karnataka & Another Vs. Uma Devi and Others**(2006) 4 SCC 1. As regards the order of Hon'ble High Court and Hon'ble the Apex Court directing minimum pay in the scale, it is the case of the Management that the this order has been complied with by the management of University. The Competent Authority in the University has constituted a Committee to examine the case of daily wagers/muster roll employees discharging the duties of Class-III and on the basis of the records available the daily wage and muster roll employees have been given pay entitled to Class-III employees and Dearness Allowance. Accordingly the management has requested that the reference be answered against the workman Union.

5. The workman Union has filed a rejoinder wherein it has denied the case of management and has further reiterated its case.

6. The workman has filed vide list 27 documents and has proved as Exhibit W-01 to W-27, to be referred to as and when required. The workman Union has further filed and proved photocopy of marksheets and service related documents of the workman Dhvajti Shankar Sharma which are Exhibit W-28 to W-31, to be referred to as and when required.

7. The workman Union has filed affidavit as his examination in chief. Opportunity of cross-examination of this witness was given to management. They did not avail this opportunity, hence opportunity of cross-examination of this witness is closed.

8. The management has not examined any witness, rather it has filed two photocopy office orders dated 5-5-2014 and 2-11-2016 both admitted by workman Union, marked as Exhibit M1 to M2 respectively.

9. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workman Union. The management did not appear at the time of arguments. The workman Union has filed written arguments also which is part of the record. No written arguments has been filed by the Management. I have gone through the record as well.

10. On perusal of record in the light of arguments, the following points/issues come up for determination :-

1) Whether the University Dr. Hari Singh Gaur University is an industry as defined under Section 2(J) and the applicant workman is a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947?

2. Whether the applicant workman was recruited as a daily wager/muster roll employee against sanctioned vacancy, following recruitment procedure and also whether he had the requisite qualification for the job he was recruited?

3. Whether the workman has been in continuous service of the management from the date of his first appointment till date?

4. Whether the applicant workman is entitled to be classified as Category-III/Class-III employee for the post of Store Keeper Assistant Grade-III, if yes from which date?

5. Whether the applicant workman is entitled to relief if any?

11. ISSUE NO.1:-

Before proceeding it is necessary to enumerate Section 2(J) and Section 2(S) of the Industrial Disputes Act, 1947 as below:-

Section 2(S)-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

12. In the case of **Rajkumar Vs. Director Education Civil appeal No.1020/2011** Hon`ble the Apex Court has held that educational institution is industry as defined under Section 2(J) of the Act. As regards the University, Hon`ble the Apex court has referred to the Judgment of Seven Judges Bench in the case of **Bangalore Water Supply & Sewerage Board Vs. R.Rajappa and Others , (1978) Scr (3) 207**, the relevant portion is being reproduced as follows:-

“The issue whether educational institution is an ‘industry’, and its employees are ‘workmen’ for 4 (1997) 5 SCC 737 ,the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under: “The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not ‘workmen’ and cannot therefore avail of the benefits of the Act so the institution ceases to be

an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations." (emphasis laid by this Court)

13. Hence, in the light of aforesaid judgment, the Dr. Hari Singh Gaur University non teaching staff is held to be workmen as defined under Section 2(S) and 2(J) and for this purpose, the University is held to be an Industry as defined under Section 2(J) of the Industrial Disputes Act, 1947. **Issue No.1 is answered accordingly.**

14. ISSUE NO.2:-

According to the workman Union, the applicant workman was initially appointed in the year 2004 as a daily wager/muster roll employee. It is undisputed that up to 2009 till passing of Central Government University Act, 2009, Dr. Hari Singh Gaur University was a State University governed by M.P. Vishwavidyalaya Adhiniyam, 1973. Clause-II of the Act provides for recruitment of Class-III employees and Class-IV employees in the University. After perusal of the Rules regarding recruitment issued in the year 1982 by the then Registrar of the University Vide Notification No. ESTT/MISC./20/4099 dated November 29, 1982 under Section 52 of (4) of M.P. Vishwavidyalaya Adhiniyam, 1973, following is the procedure regarding recruitment on Class-III and Class-IV posts:-

Recruitment Procedure:

4. That it is stated that when the Second Party University was a State University, a notification was issued in year 1982 (Exhibit W-34), where in it was provided for purposes of recruitment that:

- (i) In case of emergency, the work may be completed by appointment of a suitable persons on fixed emoluments;
- (ii) Clause 2 provides that recruitment of Class-III & IV would be done by open selection after advertisement or obtaining names from employment exchange;
- (iii) Clause 4 provides that recruitment by promotion/Selection shall be done on the basis of recommendation of 'Selection Committee', which shall interview the candidates and hold tests.
- (iv) Clause 4 provides that Registrar would nominate a 'Standing Selection Committee', which opt Head of Department as its member;
- (v) Clause 7 provides that whenever a permanent vacancy occurs or a new post is created, then, Registrar shall inform about it to the Head of the Department and later would inform the former about educational qualifications, if any, required for the said post;
- (vi) Appendix A to the notification prescribed that the for post of "Store Keeper" the candidate shall be graduate.

As regards the availability and sanctioned posts on the date of recruitment, the workman has stated in his affidavit as examination in chief that he was initially appointed on 24-11-2004 as the Store Keeper in Department of Computer Applications. The post was duly sanctioned and vacant. The RTI documents in the form of information notification of University which corroborates the aforesaid statement of the workman. The workman has filed and proved his educational qualification, service qualification and degrees which goes to show that he has acquired degree of B.Com with typing certificate which goes to show that he was firstly qualified for the job and secondly that there is a provision for appointment of daily wagers/muster rolls as an emergency measure for this post and Thirdly, that he under went that the recruitment procedure prevalent as per rules of recruitment for recruitment of daily wagers/muster roll employed by the University as mentioned in the M.P. Vishwavidyalaya Adhiniyam, 1973. **Issue No.2 is answered accordingly.**

15. ISSUE No.3:-

The workman has stated in his affidavit that since the date of his first appointment he is in continuous service of the University of course with some artificial breaks of one to two days Exhibit 1 to Exhibit 11 and Exhibit 12 to Exhibit 31 corroborate the case of the applicant workman when he has been in continuous service of the management as a daily wager/muster roll employed since the date of his first appointment till date. **Issue No.3 is answered accordingly.**

16. ISSUE NO.4:-

From the aforesaid discussion, the fact that there a vacancy for the post on which the applicant workman is working and that the applicant workman as requisite qualification of the post as well as that he has been recruited following the procedure established as mentioned above. Learned Counsel for the workman has referred to an Industrial Employment Standing Orders Act, 1946, Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 which deals with the classification of the workman referred to by learned counsel for the workman Union is being reproduced as follows:-

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1946

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy.CLCs(C) have been declared Appellate Authorities under the Act.

17. In the case of M.P.State Road Transport Corporation Vs. Heeralal and Chhedalal & Others (Manu/MP 0138/1974) decided by the 5 Judges Bench of Hon'ble High Court of M.P., it has been held that in case of any discrepancy in the Standing Orders and Rules made by the Industrial Establishment, the former shall prevail. Hon'ble High Court has referred to another decision of Hon'ble Supreme Court in U.P.State Electricity Board Vs. Hari Shankar Jain & another (1997) SC 65 which has laid down the same prepositions, hence so far as the case of the applicant workman is concerned his rights will be governed by the standard Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 mentioned as above. This is also established on record documentary/statement of applicant workman for he has been discharging duties similarly to that done by the regular staff.

18. Reference of Section 25(T) and Scheduled V of the Unfair Labour Practice of the Industrial Disputes Act, 1947 which deal with prohibition of unfair labour practice requires to be mentioned here which are being reproduced as follows:-

[CHAPTER VC**UNFAIR LABOUR PRACTICES**

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

19. It is now established that giving artificial break of one or two days at certain time establishes the fact that the management of University has adopted un fair labour practice keeping in view the fact that the same work continued after break and the same persons was engaged for that break even after breaks. Reference of case law Secretary State of Karnataka and Uma Devi & Others 2006 AIR SCW has been taken by Management in its written statement of defence but since in the case in hand it has been proved that the applicant workman was not appointed through a back door entry rather he entered in the service after undergoing the recruitment procedure prevalent at that time, hence, the law laid down in that case does not apply to the case in hand. Judgement of Hon'ble the Apex Court in the case of State of U.P. Vs. Pooranchand Pandey Appeal (civil) 3765 of 2000 and Harinandan Prasad Vs., Food Corporation of India & Ors. Appeal (civil) 3765 of 2000 require to be mentioned in this respect. **Issue No.4 is answered accordingly.**

20. ISSUE NO.5:-

Hence in the light of the above, discussion and finding, the claim of the applicant workman is held proved and he is held entitled for permanent classification in Class-III for the post of Store Keeper, Assistant Gr-III with Grade Pay admissible to him from the completion of six months from the date of his initial

appointment and is also held entitled to benefit of back wages and other service benefits, accordingly. **Issue No.5 is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

A Shri Dhawjiti Shankar Sharma who is performing the duties of Store Keeper-III Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar is held to unjustified in law and fact.

B. The workman is held entitled for permanent classification in Class-III for the post of Store Keeper, Assistant Gr-III with Grade Pay-Rs.2400/- admissible to him from 17-7-2009 the completion of six months from the date of his initial appointment and is also held entitled to benefit of back wages and other service benefits.

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 19/10/2022

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1139.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलसचिव, डॉ. हरि सिंह गौर विश्वविद्यालय, सागर, (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री संदीप बाल्मीकि, अध्यक्ष, डॉ. हरि सिंह गौर (छावनी) विश्वविद्यालय रोजगार संघ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/76/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/10/2022 को प्राप्त हुआ था।

[सं. एल-42011/87/2016-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1139.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/76/2016) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Dr. Hari Singh Gaur University, Sagar, (M.P.) and Shri Sandeep Balmiki, President, Dr. Hari Singh Gour(Cent.)University Employ Union, which was received along with soft copy of the award by the Central Government on 26/10/2022.

[No. L-42011/87/2016- IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/76/2016

Present: P. K. Srivastava, H.J.S.(Retd.)

Shri Sandeep Balmiki

President

Dr. Hari Singh Gour(Cent.)

University Employ Union

Resident of Purvyau Touri.,

Sagar, M.P. – 470001.

Versus

... Workman

The Registrar

Dr. Hari Singh Gaur University

Sagar, M.P. – 470003.

... Management

AWARD

(Passed on this 19th day of October-2022)

1. As per letter dated 19/09/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/87/2016-IR(DU). The dispute under reference relates to:

“Whether Shri Uma Shankar Rajak who is performing the duties of Computer Operator/Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar. Whether he is entitled for permanent classification with Class-III Wages, in the post of Assistant Grade-III/Computer Operator with Grade pay of Rs. 2800/- pm w.e.f. 17/07/2009 along with arrears or not?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. The case of the workman Union, as put up in their statement of claim, is that is an Association of persons working for the protection of the interest of employees working for the University. It has authority to raise a dispute and contest the case on behalf of the workman who has is a member of the Union. The workman was initially appointed as Lower Division Clerk and continued as daily wager/muster roll employee, grade three post since his initial appointment in the year 1998. He approached the Hon`ble High Court of M.P., when there was reduction of pay by way of a writ petition. Hon`ble High court directed the University to give benefit of minimum pay scale notified to the post. The University was declared a Central University vide Central University Act 2009. Before that, it was a State University as per provisions of M.P. Vishwavidyalaya Adhiniyam 1973. The workman was initially appointed as a Lower Division Clerk on 12-3-1998 in the Faculty of Management studies and started discharging his duties as Lower Division Clerk. Thereafter, he was shifted to department of Computer Science as computer operator on 9-11-1998. The said appointment was with the prior approval after creation of the post. The said workman has been continuously working since the date of his first appointment on 12-03-1998 till date and discharging his duties allotted by the University.

3. According to the workman Union, the duties which were discharged by the applicant workman is of Class-III post in the University. When the University was a State University, a resolution was passed by the Executive Council of the University in its meeting dated 1-5-2008 by exercising powers under Section 24 of the M.P. Vishwavidyalaya Adhiniyam, 1973. It was resolved that all the daily wagers/muster roll employees, employed will be entitled to minimum of pay and scale and allowances which is applicable to the Grades in which they were discharging their duties. The Executive council further adopted the recommendation of other pay recommendations of Teachers/Officers and employees vide its resolution dated 22-8-2009. The University was declared a Central University with the passage of notification of Central Universities Act, 2009. Section 4D of this Act provided that every person earlier employed by the University shall hold his office on same remuneration and terms and conditions and rules and privileges unless it is altered in consequence with the statutory rights. The Applicant Workman and the other similarly situated employees who were required to discharge duties equivalent to Class-iii employees were illegally downgraded to Class-IV employees. It is further the case of the workman Union that the university has not recruited regular employees in Class-III and Class-IV for the last several years and this work is being discharged by applicant workman and other similarly situated workman even today also. Hence, the action of the University denying standard classification pay scale of Grade-III to employees and making payment to all at the same rate of pay irrespective of work discharged by them is illegal and arbitrary. It is in this back drop that Hon`ble High Court of M.P. directed the University to pay the applicant workman and similarly situated petitioners minimum pay in the scale of pay notified for the post against which they are discharging their duties vide its order dated 26-9-2011 passed in W.P.No.4520/2010. This order has been affirmed by Hon`ble the High Court vide its order dated 26-7-2013 passed in S.L.P.No.18342-43/2013. Further it has been stated that in order to circumvent the order of Hon`ble High Court and Hon. Supreme Court, the University has not carried proper classification and fitment. Since the applicant workman is discharging duties ever since March-1998 on the post of Lower Division Clerk and Computer Operator since November-9-1998, he has not been given proper classification and fitment and deprived them of all the benefits which is violation of standard order applicable over the University. Accordingly, it has been prayed that holding the applicant workman entitled for permanent classification in Grade-III for the post of Lower Division Clerk/Computer Operator, Grade-II and III with Grade Pay Scale of Rs.4200/- per month w.e.f. completion of six months from the date of completion of six months of his application or since 12-3-1998 with arrears and interest.

4. IN the written statement of defence by the University, it has been pleaded that the allegation of the workman that he is discharging his duties on vacant and sanctioned post is incorrect. To obtain the status of a permanent employee a person must be employed in terms of statutory rules. The applicant workman was simply a daily wager/temporary employee who cannot hold the post unless he is appointment in terms of the Act and

rules framed there under. An appointment may in violation of mandatory provisions of a statute is nullity. A persons appointed in such a manner cannot claim any benefit and rights regarding regularization and permanency in service in the light of Principle laid down in the case of **State of Karnataka & Another Vs. Uma Devi and Others**(2006) 4 SCC 1. As regards the order of Hon'ble High Court and Hon'ble the Apex Court directing minimum pay in the scale, it is the case of the Management that the this order has been complied with by the management of University. The Competent Authority in the University has constituted a Committee to examine the case of daily wagers/muster roll employees discharging the duties of Class-III and on the basis of the records available the daily wage and muster roll employees have been given pay entitled to Class-III employees and Dearness Allowance. Accordingly the management has requested that the reference be answered against the workman Union.

5. The workman Union has filed a rejoinder wherein it has denied the case of management and has further reiterated its case.

6. The workman has filed vide list 77 documents and has proved as Exhibit W01 to W-69, to be referred to as and when required. The workman Union has further filed and proved photocopy of marksheets and service related documents of the workman Uma Shankar Rajak which are Exhibit W-70 to W-77, to be referred to as and when required.

7. The workman Union has filed affidavit as his examination in chief. Opportunity of cross-examination of this witness was given to management. They did not avail this opportunity, hence opportunity of cross-examination of this witness is closed.

8. The management has not examined any witness, rather it has filed two photocopy office orders dated 5-5-2014 and 2-11-2016 both admitted by workman Union, marked as Exhibit M1 to M2 respectively.

9. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workman Union. The management did not appear at the time of arguments. The workman Union has filed written arguments also which is part of the record. No written arguments has been filed by the Management. I have gone through the record as well.

10. On perusal of record in the light of arguments, the following points/issues come up for determination :-

1) Whether the University Dr. Hari Singh Gaur University is an industry as defined under Section 2(J) and the applicant workman is a workman as defined in Section 2(s) of the of the Industrial Disputes Act,1947?

2.Whether the applicant workman was recruited as a daily wager/muster roll employee against sanctioned vacancy, following recruitment procedure and also whether he had the requisite qualification for the job he was recruited?

3.Whether the workman has been in continuous service of the management from the date of his first appointment till date?

4.Whether the applicant workman is entitled to be classified as Category-III/Class-III employee for the post of Lower Division Clerk/Computer Operator /Assistant Grade-III, if yes from which date?

5.Whether the applicant workman is entitled to relief if any?

11. ISSUE NO.1:-

Before proceeding it is necessary to enumerate Section 2(J) and Section 2(S) of the Industrial Disputes Act,1947 as below:-

Section 2(S)-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
- (ii) who is employed in the police service or as an officer or other employee of a prison, or**
- (iii) who is employed mainly in a managerial or administrative capacity, or**

- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

12. In the case of **Rajkumar Vs. Director Education Civil appeal No.1020/2011** Hon'ble the Apex Court has held that educational institution is industry as defined under Section 2(J) of the Act. As regards the University, Hon'ble the Apex court has referred to the Judgment of Seven Judges Bench in the case of **Bangalore Water Supply & Sewerage Board Vs. R.Rajappa and Others , (1978) Scr (3) 207**, the relevant portion is being reproduced as follows:-

"The issue whether educational institution is an 'industry', and its employees are 'workmen' for 4 (1997) 5 SCC 737, the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under: "The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations." (emphasis laid by this Court)

13. Hence, in the light of aforesaid judgment, the Dr.Hari Singh Gaur University non teaching staff is held to be workmen as defined under Section 2(S) and 2(J) and for this purpose, the University is held to be an Industry as defined under Section 2(J) of the Industrial Disputes Act,1947. **Issue No.1 is answered accordingly.**

14. **ISSUE NO.2:-**

According to the workman Union, the applicant workman was initially appointed in the year 1998 as a daily wager/muster roll employee. It is undisputed that up to 2009 till passing of Central Government University Act,2009, Dr. Hari Singh Gaur University was a State University governed by M.P. Vishwavidyalaya Adhiniyam,1973. Clause-II of the Act provides for recruitment of Class-III employees and Class-IV employees in the University. After perusal of the Rules regarding recruitment issued in the year 1982 by the then Registrar of the University Vide Notification No.ESST/MISC./20/4099 dated November 29,1982 under Section 52 of (4) of M.P.Vishwavidyalaya Adhiniyam ,1973, following is the procedure regarding recruitment on Class-III and Class-IV posts:-

Recruitment Procedure:

4.That it is stated that when the Second Party University was a State University, a notification was issued in year 1982(Exhibit W-34), where in it was provided for purposes of recruitment that:

- (i)In case of emergency, the work may be completed by appointment of a suitable persons on fixed emoluments;
- (ii).Clause 2 provides that recruitment of Class-III & IV would be done by open selection after advertisement or obtaining names form employment exchange;
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(iv). Clause 4 provides that Registrar would nominate a ‘Standing Selection Committee’, which opt Head of Department as its member;

(v). Clause 7 provides that whenever a permanent vacancy occurs or a new post is created, then, Registrar shall inform about it to the Head of the Department and later would inform the former about educational qualifications, if any, required for the said post:

(vi). Appendix A to the notification prescribed that the for post of “Lower Division Clerk/Computer Operator the candidate shall be graduate in science with relevant subject.

As regards the availability and sanctioned posts on the date of recruitment, the workman has stated in his affidavit as examination in chief that he was initially appointed on 12-3-1998 as the *Lower Division Clerk/ and was transferred to Computer Science Department*. The post was duly sanctioned and vacant and thereafter he was transferred to computer science application department. The RTI documents in the form of information notification of University which corroborates the aforesaid statement of the workman. The workman has filed and proved his educational qualification, service qualification and degrees which goes to show that he has acquired masters degree with Diploma in computer application and PGDCA as well shorth hand typing certificate in Hindi and English which goes to show that he was firstly qualified for the job and secondly that there is a provision for appointment of daily wagers/muster rolls as an emergency measure for this post and Thirdly, that he under went that the recruitment procedure prevalent as per rules of recruitment for recruitment of daily wagers/muster roll employed by the University as mentioned in the M.P. Vishwavidyalaya Adhiniyam, 1973. Issue No.2 is answered accordingly.

15. ISSUE No.3:-

The workman has stated in his affidavit that since the date of his first appointment he is in continuous service of the University of course with some artificial breaks of one to two days Exhibit 3 to Exhibit 11 and Exhibit 12 to Exhibit 46 corroborate the case of the applicant workman when he has been in continuous service of the management as a daily wager/muster roll employed since the date of his first appointment till date. Issue No.3 is answered accordingly.

16. ISSUE NO.4:-

From the aforesaid discussion, the fact that there a vacancy for the post on which the applicant workman is working and that the applicant workman as requisite qualification of the post as well as that he has been recruited following the procedure established as mentioned above. Learned Counsel for the workman has referred to an Industrial Employment Standing Orders Act, 1946, Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 which deals with the classification of the workman referred to by learned counsel for the workman Union is being reproduced as follows:-

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1946

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17. In the case of M.P.State Road Transport Corporation Vs. Heeralal and Chhedalal & Others (Manu/MP 0138/1974) decided by the 5 Judges Bench of Hon'ble High Court of M.P., it has been held that in case of any discrepancy in the Standing Orders and Rules made by the Industrial Establishment, the former shall prevail. Hon'ble High Court has referred to another decision of Hon'ble Supreme Court in U.P.State Electricity Board Vs. Hari Shankar Jain & another (1997) SC 65 which has laid down the same prepositions, hence so far as the case of the applicant workman is concerned his rights will be governed by the standard Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 mentioned as above. This is also established on record documentary/statement of applicant workman for he has been discharging duties similarly to that done by the regular staff.

18. Reference of Section 25(T) and Scheduled V of the Unfair Labour Practice of the Industrial Disputes Act, 1947 which deal with prohibition of unfair labour practice requires to be mentioned here which are being reproduced as follows:-

[CHAPTER VC

UNFAIR LABOUR PRACTICES

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

19. It is now established that giving artificial break of one or two days at certain time establishes the fact that the management of University has adopted an unfair labour practice keeping in view the fact that the same work continued after break and the same persons were engaged for that break even after breaks. Reference of case law Secretary State of Karnataka and Uma Devi & Others 2006 AIR SCW has been taken by Management in its written statement of defence but since in the case in hand it has been proved that the applicant workman was not appointed through a back door entry rather he entered in the service after undergoing the recruitment procedure prevalent at that time, hence, the law laid down in that case does not apply to the case in hand. Judgement of Hon'ble the Apex Court in the case of State of U.P. Vs. Pooranchand Pandey Appeal (civil) 3765 of 2000 and Harinandan Prasad Vs. Food Corporation of India & Ors. Appeal (civil) 3765 of 2000 require to be mentioned in this respect. **Issue No.4 is answered accordingly.**

20. **ISSUE NO.5:-**

Hence in the light of the above, discussion and finding, the claim of the applicant workman is held proved and he is held entitled for permanent classification in Class-III for the post of Lower Division Clerk/Computer Operator, Assistant Gr-III with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to benefit of back wages and other service benefits, accordingly. **Issue No.5 is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

A. Shri Uma Shankar Rajak who is performing the duties of Lower Division Clerk/Computer Operator in Assistant Grade III, being paid only Class-IV wages by Dr. Hari Singh Gour University, Sagar is held to unjustified in law and fact.

B. The workman is held entitled for permanent classification in Class-III for the post of Lower Division Clerk/Computer Operator, Assistant Gr-III with Grade Pay Rs.2800/- admissible to him from the completion of six months from the date 17-7-2009 of his initial appointment and is also held entitled to benefit of back wages and other service benefits.

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 19/10/2022

नई दिल्ली, 7 नवम्बर, 2022

का.आ. 1140.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर, मेसर्स बिरानी मार्बल के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, जनजाति खान मज़दूर संघ बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 13/2015) को प्रकाशित करती है।

[सं. एल-28011/14/2015आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 7th November, 2022

S.O. 1140.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, M/s Birani Marble and The President, Janjati Khan Mazdoor Sangh.

[No. L-28011/14/2015- IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 13 सन् 2015 I.T.R.(C)

अध्यक्ष, जनजाति खान मजदूर संघ—बनाम—मैनेजर मैसर्स बिरानी मार्बल प्रा. लि,

अधिसूचना :L-28011/14/2015-IR(M) Dated 22.06.2015

13.08.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक-अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

अतः प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फ़ैसल शुमार होकर दाखिल दफ़्तर हो ।

सदस्य सचिव

गोपाल बिजोरीवाल, अध्यक्ष लोक-अदालत

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिद्धार्थ ग्रीन मार्बल के प्रबंधन के संबद्ध नियोजकों और श्री देवीलाल पुत्र श्री मणीलालजी जाति मीणा बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या (56/2015) प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर-(एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2015) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s Siddharth Green Marble and Shri Devi Lal S/o Shri Manilal Ji Jati Meena**.

[No. Z-16025/04/2022- IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी —शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 56/2015 I.T.R. (C)

श्री देवीलाल पुत्र श्री मणीलालजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल प्रा.लि. मसारां की ओबरी, निवासी गांव कागदर, माण्डवा फला, तहसील ऋषभदेव, जिला उदयपुर

— प्रार्थी

विरुद्ध

मेसर्स सिद्धार्थ ग्रीन मार्बल प्रा.लि. मसारां की ओबरी, तहसील ऋषभदेव, जिला उदयपुर

— विपक्षी

उपस्थित :-

प्रार्थी की ओर से :- श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :- कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 16.08.2022

प्रार्थी देवीलाल द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक ऐजे-5(121) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 05.01.2007 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाइम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से 10 मई 2014 तक हड़ताल पर थे।

मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्री आयुक्त (केन्द्रीय) अजमेर की मध्यस्थता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 07.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 07.05.2014 को प्रार्थी जब काम करने के लिए जब खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवायें हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवायें दी हैं। क्षेत्र के सभी

श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/-रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 350/-रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पे दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 7 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्ति का नाटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्ति किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2007 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवायें दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत है। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उससे 8 घण्टे के बजाय 12 घण्टे तक काम करवाया जाता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 22.06.2017 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से देवीलाल मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल प्रा.लि. मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी श्री देवीलाल पुत्र श्री मणीलालजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल प्रा.लि. मसारों की ओबरी, निवासी गांव कागदर, माण्डवा फला, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 07.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 2007 से लेकर 2014 तक प्रत्येक केलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी है, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 07.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में

50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी श्री देवीलाल पुत्र श्री मणीलालजी जाति मीणा को विपक्षी संस्थान मेसर्स सिद्धार्थ ग्रीन मार्बल प्रा.लि. मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा दिनांक 07.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि का भुगतान 2 माह में करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(121)/2014-आरएलसी दिनांक 15.09.2014 के कम में भेजा जावे।

शिव कुमार शर्मा, न्यायाधीश

पंचाट आज दिनांक 16 अगस्त 2022 को खुले न्यायालय में लिखाया जाकर सुनाया गया।

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टाटा स्टील लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह - श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 07/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-20013/01/2022-आईआर-(सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.07/2016) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of Tata Steel Ltd and their workmen, received by the Central Government on 10/10/2022.

[F. No. L-20013/01/2022-IR(CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURER

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

ID Case No. 07/2016

Sri Belal Khan,
Jamdoba Colliery
P.O.-Jamadoba
Dist-Dhanbad

... Applicants.

Vs.

Management of Jamadoba Colliery of M/s. Tata Steel Ltd.

... Opposite Parties

Present: **Shri Dinesh Kumar Sing** Presiding Officer.

Appearances:

For Employer :- Sri D.Mukherjee, Advocate.

For workman :- Sri D.K. Verma, Advocate

State : Jharkhand.

Industry:Iron&Steel

Dated 28/09/2022

AWARD

1. The concerned workman namely Belal Khan has filed an application on 21/10/2016 U/S 2A of I.D. Act 1947 as statement of claim with the following schedule:-

SCHEDULE

“Whether the action of the management of Jamadoba Colliery of M/s. Tata Steel is dismissing Sri Belal Khan w.e.f. 18/05/2015 was legal and justified? If not to what relief the workman entitled?”

2. Thereafter notice has been issued to Management of Jamadoba Colliery of M/s. Tata Steel Ltd. which has filed its written statement on 26/04/2017.

3. The Authorised Representative of concerned workman has filed rejoinder to the written statement of the management on 24/05/2017.

4. The claim of the concerned workman namely Belal Khan as per his claim of statement is as follows:-

That he had been working as permanent workman at Jamadoba Colliery since long but he was falsely implicated in a criminal case by the vested interested persons with an ulterior motive. He was not involved in that criminal case which was not connected with his employment but unfortunately he was convicted/punished by the lower court in session trial no-459/2002 U/S 304/34 of I.P.C. After that the management issued a notice dated 30/04/2015 wherein and whereby he was threatened to be dismissed for his conviction in criminal case and he had submitted his reply objecting to the proposed action of dismissal on the ground that he had already preferred an appeal before the Hon`ble Jharkhand High Court challenging the illegal conviction order but the management did not take any cognizance and passed order of dismissal on 18/05/2015. He had preferred an appeal before the Hon`ble Jharkhand High Court and the Hon`ble Jharkhand High Court has been pleased to admit the appeal by order dated 15/07/2015 suspending the sentence during the pendency of the appeal. He has made prayer to the management not to pass order of dismissal till the finalization of the appeal but his prayer was not considered.

He has made prayer to pass an Award with a direction to the management to reinstate him with full back wages.

5. The case of the management as per its written statement is as follows:-

That the present application is not maintainable either in law or in facts and Sri Belal Khan, was an ex-employee of Jharia Division since 26/10/1976 as General Mazdoor at Jamadoba Colliery. In the meantime a criminal case was registered against the concerned workman at Jorapokhar PS Case No. 264 of 2000 on the basis of Fardbeyan of informant namely Shamshad Alam @ Munna and after investigation the police submitted charge-sheet against him along with 8 other accused persons. After conclusion of trial the Additional Sessions Judge XIII, Dhanbad in Session Trial No. 459/2002 found and held that Belal Khan and 8 others were guilty for offences under section 304 part II read with Section 34 of the IPC and subsequently they were convicted to undergo imprisonment for 10 years vide order dated 13/04/2015. After conviction of the concerned workman the management had given a notice to the Belal Khan to make a representation in this regard vide letter no. AJG/HRD/10/319/15 dated 30/04/2015 mentioning therein that as per provisions of Certified Standing Order of the Company any workman who was convicted and had been sentenced on the charge of moral turpitude by a Court of law would be liable to be dismissed from the service of the company. The concerned workman had submitted his reply and after finding his reply not satisfactory the company in observance of clause 19(15) of the Company's Standing Order dismissed Sri Belal Khan from the service of Tata Steel Company w.e.f. 23/05/2015 vide letter no. AJG/HRD/10/00369/15 dated 18/05/2015.

A prayer has been made to hold that the dismissal of the workman Belal Khan is legal and justified and he is not entitled to get any relief.

The management by way of rejoinder has stated that the statement made in Para-1, 3, 10 of the statement of claim of the workman are matter of record, the statement made in Para -2, 4, 5, 6, 7, 8, 9, 11, 12 and 13 of the statement of claim of workman are not correct.

6. The concerned workman has submitted rejoinder to the written statement of the management in which it is mentioned that the statement made in Para -1 of the written statement of management, it is submitted that the present application is legally maintainable, the statement made in Para-2 of the written statement of management is irrelevant and denied, the statement made in Para 3, 4, 5 and 6 of the written statement of management it is submitted that the workman was entangled in false criminal case, the statement made in Para 7, 8, 9 and 10 of the written statement of management. It is submitted that management illegally dismissed the workman.

7. The concerned workman has examined himself as WW-1.

8. The concerned workman has proved the following documents which are marked as:-

Exhibit W-1- Photo Copy of Order dated 15/07/2015 of Hon`ble Jharkhand High Court in Cr. Appeal (DB) No. 301 of 2015/285 of 2015.

Exhibit W-2- Photo Copy of Order dated 02/05.05.2015 passed in Cr. Revision No. 373 of 2015 of Hon`ble Jharkhand High Court, Ranchi.

Exhibit W-3- Photo Copy of Judgment dated 02/02/2015 passed by Session Judge, Dhanbad in Criminal Appeal No. 123 of 2013.

Exhibit W-4- Photo Copy of Order dated 08/08/2011 against the judgment of conviction dated 20/12/2001 and order of sentence dated 20/12/2001 passed by Shri Sharang Dhar Singh, 5th Additional Sessions Judge, Dhanbad in Sessions Trial No. 346 of 1996.

Exhibit W-5- Photo Copy of Judgment dated 03/04/2006 of Judicial Magistrate 1st class, Dhanbad in G.R. No., 857 of 2001.

9. The management has examined only one witness. He is MW-1, Abhinav Sharma.

The management has proved the following documents which are marked as:-

Exhibit M-1- Photo Copy of Certified Standing Order of Tata Steel Ltd. (Total 3 sheets).

Exhibit M-2- Photo Copy of Certified Copy of Judgment of Addl. Sessions Judge-XIII, Dhanbad. (Total 4 sheets) passed in Session Trial No. 459/02 on 08/04/2015.

Exhibit M-3- Photo Copy of Show Cause Notice No. AJG/HRD/10/319/15 dated 30/04/2015 issued to Belal Khan, P.No. 210012, Jamadoba Colliery issued by Agent & Chief, Jamadoba Group .

Exhibit M-4- Photo Copy of Letter no. 1252 dated 9.5.2015 of Superintendent of Jail, Dhanbad addressed to Agent (Chief), Tata Steel, Jamadoba Colliery.

Exhibit M-4/1-Photo Copy of reply of show cause of workman.

Exhibit M-5- Photo Copy of Order of Dismissal No. AJG/HRD/10/369, dated 18/05/2015 of Sri Belal Khan.

10. The learned lawyer of concerned workman has submitted that the concerned workman namely Belal Khan had been working as permanent Senior Electromech in Jamadoba Colliery since long with unblemished record of service. He has also argued that Sri Shamshad Alam @ Munna had lodged a case against the concerned workman and Hon'ble Additional Judge, Dhanbad in Session Trial No. 459/2002 convicted and sentenced him to undergo imprisonment for 10 years. He has further argued that the concerned workman had preferred appeal against the said judgement before the Hon'ble Jharkhand High Court which was admitted and sentence of the workman was suspended by the Hon'ble Jharkhand High Court but the management in the meantime had dismissed him after issuing a notice. He has also submitted that the dismissal of the concerned workman was illegal and void-abinitio. He has also submitted that the criminal case in which the concerned workman was convicted was not connected with the employment of the workman and had not taken place in course of his duty or during duty hours, so it is not a case of involvement of moral turpitude. He has also submitted that dismissal of the concerned workman is illegal for the reason that as per certified standing order of the company it is mandatory to issue charge-sheet, conduct domestic enquiry, to issue second show cause notice along with enquiry proceeding and report after giving opportunity to reply. He has also argued that in this case no charge-sheet was issued no enquiry was conducted and no second show cause notice was issued to the workman and the Hon'ble Supreme Court in catena of decision has been pleased to hold that dismissal is illegal and void for non-issuing of second show cause notices. He has also argued that the appeal against the conviction is pending before the Hon'ble High Court in which the Hon'ble High Court has been pleased to hold that all the nine accused deserve the concession of suspension of sentence, during the pendency of appeal, so there is no conviction in the eye of law. He has also argued that the dismissal of concerned workman on the ground of conviction in criminal case without waiting for the decision of Appeal in High Court held illegal and void as reported in 1995 (1) PLJR-P399 and 2004(103) FLR P- 1143 (Allahabad). He has also argued that in the matter of punishment the management had discriminated the case of workman with other workers who had also been convicted in the criminal case, so the dismissal of the concerned workman is illegal and void.

11. The learned lawyer of the management has submitted that the concerned workman namely Belal Khan was convicted in session trial no. 459/2002 along with others by Additional Session Judge XIII, Dhanbad and the act of the concerned workman comes under the definition of moral turpitude as described by the Hon'ble Allahabad High Court. He has also argued that as per clause 19 (15) of the Certified Standing Orders of Tata Steel Limited any workman who is convicted and sentenced on the charge involving moral turpitude is misconduct and he is liable to be dismissed from the service of the company. He has further submitted that the concerned workman was given chance to represent himself and he had submitted his reply which was not found satisfactory and subsequently he was dismissed from the service. He has also argued that the suspension of execution of sentence does not loss its efficacy merely because appellate court has suspended the execution of sentence. He has further submitted that the concerned workman had been given an opportunity to defend himself and thereafter he was dismissed from the service as per Certified Standing Order, so this case is not maintainable at all.

12. Now, the only point of determination in this case is whether the action of management of Jamadoba Colliery of M/s. Tata Steel Ltd. in dismissing Sri Belal Khan was legal and justified?

FINDINGS

13. At the outset of discussion it is required to mention here that it is an admitted fact that the concerned workman namely Belal Khan was an employee of Jharia Devison since 26/10/1976 as General Mazdoor at Jamadoba Colliery.

It is also an admitted fact that a criminal case was registered against him as Jorapokhar PS Case No. 264 of 2000 on the basis of Fardbeyan of informant namely Samshad Alam and after conclusion of trial he was convicted and sentenced to undergo rigorous imprisonment for 10 years vide judgement dated 13/04/2015 in Session Trial No. 459/2002 by the Addl. Session Judge-XIII, Dhanbad.

It is further admitted by both the parties that after conviction of the concerned workman, he was served a notice by the management as per Certified Standing Order and he had submitted his reply but the management after finding his reply, dismissed him from the service w.e.f. 23/05/2015.

14. Now, the only point which is required to be discussed is whether the management of Jamadoba Colliery has got power to dismiss the concerned workman after conviction and sentencing him to undergo imprisonment?

15. In this regard the WW-1, Belal Khan has deposed that he had been convicted in Session Trial No. 453 of 2002 and subsequently the management had dismissed him vide order dated 18/05/2015. He has also stated that he had preferred an appeal before the Hon'ble Jharkhand High Court which is registered as Criminal Appeal No. (DB) 301 of 2015 and 285 of 2015. He has further stated that the Hon'ble High Court has been pleased to admit his appeal and has also been pleased to suspend the sentence during the pendency of the appeal. He has also stated that he had made request to the management for his reinstatement but the management had not considered is request. He has also deposed that there are many workers who were similarly convicted in criminal case but they were not dismissed. In the cross-examination he has deposed that till today his conviction is maintained.

16. Further in this regard the MW-1, Abhinav Sharma has deposed that in the Certified Standing Order it is mentioned that any conviction in any court of law in any criminal offence involving moral turpitude is misconduct. He has also stated that after conviction, a cause notice was issued to the Belal Khan and the same was served in Dhanbad Jail and he had submitted his reply. He has also stated that since Belal Khan had been convicted by a Court in a criminal case, so he was dismissed from his service. In the cross-examination he has stated that the criminal case was not connected with the affairs of the Company or his working. He has also stated that in the judgement it has not been mentioned that Belal Khan was convicted on the ground of moral turpitude. He has also deposed that charge-sheet was not issued against the workman and no departmental enquiry was conducted in this matter. He has further stated the Belal Khan had informed that appeal against the order of conviction was preferred and the order of conviction has been stayed.

17. Now, coming to the documentary evidence of the concerned workman it appears that Exhibit W-1 is a photo copy of order of Hon'ble Jharkhand High Court passed in Cr. Appeal (DB) No. 301 of 2015 with Cr. Appeal (DB) No. 285 of 2015 in which the Hon'ble High Court in Para -10 has been pleased to mention that all the nine accused deserve the concession of suspension of sentence, during the pendency of appeal, so prayer is allowed. Further the Hon'ble High Court has been pleased to grant bail to all the nine accused persons including the concerned workman Irshad Alam during the pendency of the appeal, Exhibit W-2 is a order of Hon'ble High Court passed in Cr. Revision No. 373 of 2015 in which Md. Shakur was granted bail by the Hon'ble High Court, Exhibit W-3 is a photo copy of judgement passed by Session Judge, Dhanbad in Cr. Appeal No. 123 of 2013 by which the Learned Session Court has been pleased to dismiss the appeal of Md. Sakur, Exhibit W-4 is a photo copy of Judgement passed by the Hon'ble Jharkhand High Court in Cr. Appeal (D.B.) No. 21 of 2002 with Cr. Appeal (D.B.) No. 51 of 2002 in which the appellants were acquitted, Exhibit W-5 is the photo copy of judgment passed by Sri Prem Shankar, Judicial Megistrate, 1st Class, Dhanbad in which the accused Laddan Khan and Taufique Khan were held guilty for the offence u/s 323, 325, 341, 379/34 on the IPC.

18. On the other hand the documents of the management show that the Exhibit M-1 is photo copy of Standing Orders of Tata Iron & Steel Company, Exhibit M-2 is a judgement of Session Trial No. 459/02 passed by Sri Mahendra Prasad, Addl. Sessions Judge-XIII, Dhanbad u/s 304 Part II/34 IPC and subsequently sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 10,000/-, Exhibit M-3 is a photo copy of letter sent to concerned workman, Exhibit M-4 is the photo copy of letter issued by Superintendent, Mandal Kara, Dhanbad to Agent (Chief) Tata Steel, Jamadoba Group and Exhibit M4/1 is a letter of Belal Khan to the Agent & Chief, Jamadoba Group, requesting him not to take any disciplinary action against him till the finalisation of the criminal appeal and Exhibit M-5 is the order of dismissal sent to the concerned workman.

19. It is relevant to mention here that under clause 19 of Standing Order of Tata Iron & Steel Company there is a provision that any employee may be suspended fined or dismissed without notice or any compensation in lieu of the notice if he is found to be guilty of misconduct, provided that suspension without pay, whether as a

punishment or pending an enquiry, shall not exceed ten days. A list of misconducts are provided under clause 19 of Standing Order subsequently and under clause 15 it has been mentioned that conviction in any court of law for any criminal offence involving moral turpitude. Further in clause 20, of the standing order of Tata Iron & Steel Company it is mentioned that no orders of punishment by way of suspension, dismissal or fine may be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. It has been also provided that the approval of the Owner, Agent or Divisional Manager (Collieries) of the Company is required in every case of dismissal and when circumstances appear to warrant it that officer may institute separate independent enquiries before dealing with the charges against an employee. It has also been provided that during the period enquiries are being made on account of alleged misconduct, the employee concerned may be suspended.

20. Here in this case Exhibit M-3 is a letter written to Belal Khan by Agent & Chief, Jamadoba Group seeking his representation within 7 days of the receipt of this letter regarding his conviction vide order dated 13/04/2015 passed by Additional District Judge XIII in Session Trial No. 459/2002 u/s 304/34 of IPC. Further Exhibit M-5 is a letter addressed to Sri Belal Khan by which he was dismissed from the service on the ground that he had been convicted by the court of law on the charge of commission of an offence under Indian Penal Code involving moral turpitude.

21. It is required to mention here that the concerned workman had preferred an appeal before the Hon'ble Supreme Court and the Hon'ble High court has been pleased to suspend the sentence during the pendency of the appeal.

In this regard it was the contention of the learned lawyer of the workman that the alleged incident was neither connected with the employment nor the alleged occurrence committed within the terms of the Company, so the management has no legal right to take any disciplinary action. The further contention of Ld. Lawyer of management that on suspension of sentence, the workman could not be dismissed.

22. He has relied on the decision of Hon'ble Supreme Court as reported in 1983, 508 (M/s. Glaxo Laboratories Ltd Vs. P.O. L-Court). He has also relied on the decision of Hon'ble Patna High Court as reported in 1995 (1) P.L.J.R- P399 in which it has been categorically mentioned that the power of dismissal cannot be exercised till the appeal against conviction has been disposed of or time limit for filing, so dismissal till the disposal of appeal is illegal.

However it was the contention of the Ld. Lawyer of management that conviction of workman by any Court Law involving moral turpitude is liable to be dismissed even after suspension of sentence by the Appellate Court.

23. In this regard, the learned lawyer of the management has relied on the decision of Hon'ble Supreme Court reported in SCLJ (1994-98) Vol-1 Page 409 in which it has been mentioned that the Appellate Court has power to suspend the execution of sentence and release an accused on bail and when the Appellate Court suspends the execution of sentence and grants bail to an accused, the effect of the order is that sentence based on conviction is for time being postponed or kept in abeyance during the pendency of appeal.

24. Now in this case on the basis of conviction in a criminal case the concerned workman namely Belal Khan had been dismissed by the management from the service after serving notice as per Rule 19(15) of Standing Order mentioning the facts that he would be dismissed from the service of the charge of conviction under IPC involving moral turpitude and the concerned workman had submitted his reply.

25. The Hon'ble Supreme Court as reported in Union of India and others Vs. Ramesh Kumar, the Hon'ble Supreme Court has been pleased to hold as follows:- "When the appellant Court suspends the execution of sentences, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under section 389 Cr.P.C. an accused avoids undergoing sentences pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellant Court has suspended the execution of sentence."

Here in this case the Hon'ble High Court of Jharkhand in Cr. Appeal No. 30/2015 with 285/2015 has been pleased to suspend the sentence of the Belal Khan during the pendency of the appeal.

26. In view of the decision of Hon'ble Supreme Court as discussed above the effect of the order of suspension of the execution of sentences, of the workman Belal Khan is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal and conviction by Court of Law does not lose its efficacy.

27. Since, there is a decision of Hon'ble Supreme Court on this point, so the decision of Hon'ble Patna High Court as reported in 1995 (1) PLJR- P-399 is not applicable in this case.

28. In view of above discussion the dismissal of the concerned workman namely Belal Khan on the basis of conviction in a (Session Trial No., 459 of 2002 under provision of 19(15) of the standing order is legal and proper.

29. After considering all the facts and circumstances of the case the Tribunal finds that the action of the management of Jamadoba Colliery is legal and justified.

Hence, he is not entitled for any relief.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिद्धार्थ ग्रीन मार्बल के प्रबंधन के संबंध में नियोजकों और श्री राजु पुत्र श्री नानजी जाति मीणा बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 61/2015) प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (61/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Siddharth Green Marble and Shri Raju S/o Shri Nanji Jati Meena.

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 61/2015 I. T. R. (C)

श्री राजु पुत्र श्री नानजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर ——— प्रार्थी

विरुद्ध

मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर ——— विपक्षी

उपस्थित :—

प्रार्थी की ओर से :— श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :— कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 29.08.2022

प्रार्थी राजु द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक एजे-5(120) 2014—आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 05.03.1998 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले

श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाइम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से कैसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से 10 मई 2014 तक हड़ताल पर थे।

दिनांक 08 मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्री आयुक्त (केन्द्रीय) अजमेर की मध्यस्थता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 11.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 11.05.2014 को प्रार्थी जब काम करने के लिए जब खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवायें हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवायें दी हैं। क्षेत्र के सभी श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/—रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 371/—रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पे दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्ति का नोटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्ति किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 1995 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवायें दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उससे 8 घण्टे के बजाय 12 घण्टे तक काम करवाया जाता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 25.11.2016 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से राजू मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी श्री .श्री राजु पुत्र श्री नानजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 11.05.2014 को

गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 1995 से लेकर 2014 तक प्रत्येक कैलेंडर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावें तथा प्रार्थी को विपक्षी के

नियोजन में निरन्तरत, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 11.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तरत, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में

50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी श्री राजु पुत्र श्री नानजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर द्वारा दिनांक 11.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(120) 2014—आरएलसी दिनांक 15 सितम्बर, 2014 के क्रम में भेजा जावें।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1144—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिद्धार्थ ग्रीन मार्बल के प्रबंधन के संबद्ध नियोजकों और श्री काउड़ा पुत्र श्री लालाजी जाति मीणा बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या (60/2015) प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Siddharth Green Marble and Shri Kauda S/o Shri Lalaji Jati Meena.

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 60/2015 I.T.R. (C)

श्री काउडा पुत्र श्री लालाजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर

— प्रार्थी

विरुद्ध

मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर

— विपक्षी

उपस्थित :—

प्रार्थी की ओर से :— श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :— कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 29.08.2022

प्रार्थी काउडा द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक ऐजे-5(116) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 01.01.2007 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाइम, ग्रेज्युटी एवं पी.एफ.जैसी न्यूनतम सुविधाएँ प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से 10 मई 2014 तक हड़ताल पर थे।

दिनांक 08 मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्री आयुक्त (केन्द्रीय) अजमेर की मध्यस्थता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 11.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 11.05.2014 को प्रार्थी जब काम करने के लिए जब खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवायें हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवायें दी हैं। क्षेत्र के सभी

श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/—रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 371/—रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पे दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेजुटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्ति का नोटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्ति किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2007 से लेकर 2014 तक प्रत्येक कैलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएँ दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उससे 8 घण्टे के बजाय 12 घण्टे तक काम करवाया जाता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 25.11.2016 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से प्रार्थी का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी श्री काउडा पुत्र श्री लालाजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 11.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 2007 से लेकर 2014 तक प्रत्येक कैलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा

नहीं की। प्रार्थी को इस प्रकार दिनांक 11.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तरत, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में

50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी श्री काउडा पुत्र श्री लालाजी जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर द्वारा दिनांक 11.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(116) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 के कम में भेजा जावे।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिद्धार्थ ग्रीन मार्बल के प्रबंधतंत्र के संबद्ध नियोजकों और श्री मगन पुत्र श्री सूरज जाति मीणा बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 59/2015) प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2015) of the Industrial Tribunal/Labour Court, Udaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Siddharth Green Marble and Shri Magan S/o Shri Suraj Jati Meena.

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 59/2015 I.T.R. (C)

श्री मगन पुत्र श्री सूरज जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर

— प्रार्थी

विरुद्ध

मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर

— विपक्षी

उपस्थित :—

प्रार्थी की ओर से :— श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :— कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 29.08.2022

प्रार्थी मगन द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक एजे-5(118) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 01.01.2007 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाईम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से 10 मई 2014 तक हड़ताल पर थे।

दिनांक 08 मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्री आयुक्त (केन्द्रीय) अजमेर की मध्यस्थता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 11.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 11.05.2014 को प्रार्थी जब काम करने के लिए जब खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवायें हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवायें दी हैं। क्षेत्र के सभी

श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/-रूपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 371/-रूपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पे दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्ति का नोटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्ति किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2007 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएँ दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उससे 8 घण्टे के बजाय 12 घण्टे तक काम करवाया जाता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 25.11.2016 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से प्रार्थी का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल मसारा की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी श्री मगन पुत्र श्री सूरज जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारा की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 11.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 2007 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 11.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में

50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी श्री मगन पुत्र श्री सूरज जाति मीणा, उम्र वयस्क, वारसो ऑपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल मसारों की ओबरी, निवासी गांव— कागदर फला—माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 11.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(118) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 के क्रम में भेजा जावे।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टाटा स्टील लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण- सह - श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 06/2016)** को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-20013/01/2022-आईआर-(सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No.06/2016**) of the **Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD** as shown in the Annexure, in the industrial dispute between the Management of **Tata Steel Ltd** and their workmen, received by the Central Government on **10/10/2022**.

[No. L-20013/01/2022-IR(CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

ID Case No. 06/2016

Sri Irshad Alam,
Jamdoba Colliery
P.O.-Jamdoba
Dist-Dhanbad

Applicants.

Vs.

Management of Jamdoba Colliery of M/s. Tata Steel Ltd. ,.....Opposite Parties

Present: **Shri Dinesh Kumar Singh** Presiding Officer.

Appearances:

For Employer :- Sri D.Mukherjee, Advocate.

For workman :- Sri D.K. Verma, Advocate

State : Jharkhand.

Industry:-Iron&Steel

Dated 28/09 /2022

AWARD

1. The concerned workman, namely Irshad Alam has filed an application on 21/10/2016 U/S 2A of I.D. Act 1947 as statement of claim with the following schedule:-

SCHEDULE

“Whether the action of the management of Jamadoba Colliery of M/s Tata Steel is dismissing Sri Irshad Alam w.e.f. 18/05/2015 was legal and justified? If not to what relief the workmen entitled?”

2. Thereafter notice has been issued to Management of Jamadoba Colliery of M/s. Tata Steel Ltd. which has filed its written statement on 26/04/2017.

3. The Authorised Representative of concerned workman has filed rejoinder to the written statement of the management on 24/05/2017.

4. The claim of the concerned workman namely Irshad Alam as per his claim of statement is as follows:-

That he had been working as permanent workman at Jamadoba Colliery since long but he was falsely implicated in a criminal case by the vested interested persons with an ulterior motive. He was not involved in that criminal case and that case was not connected with his employment but unfortunately he was convicted/punished by the lower court in session trial no-459/2002 U/S 304/34 of I.P.C. After that the management issued a notice dated 30/04/2015 wherein and whereby he was threatened to be dismissed for his conviction in criminal case and he had submitted his reply objecting to the proposed action of dismissal on the ground that he had already preferred an appeal before the Hon`ble Jharkhand High Court challenging the illegal conviction order but the management did not take any cognizance and passed order of dismissal on 18/05/2015. He had preferred an appeal before the Hon`ble Jharkhand High Court and the Hon`ble Jharkhand High Court has been pleased to admit the appeal by order dated 15/07/2015 suspending the sentence during the pendency of the appeal. He has made prayer to the management not to pass order of dismissal till the finalization of the appeal but his prayer was not considered.

He has made prayer to pass an Award with a direction to the management to reinstate him with full back wages.

5. The case of the management as per its written statement is as follows:-

That the present application is not maintainable either in law or in facts and Sri Irshad Khan @ Irshad Alam, Ex-P No. 219173 was an ex-employee of Jamadoba Colliery of Jharia Division since 16/02/2005 as Cat-I Mazdoor at Jamadoba Colliery. In the meantime a criminal case was registered against the concerned workman at Jorapokhar PS Case No. 264 of 2000 on the basis of Fardbeyan of informant namely Shamshad Alam @ Munna and after investigation the police submitted charge-sheet against him along with 8 other accused persons. After conclusion of trial the Additional Sessions Judge XIII, Dhanbad in Session Trial No. 459/2002 found and held that Irshad Alam and 8 others were guilty for offences under section 304 part II read with Section 34 of the IPC and subsequently they were convicted to undergo imprisonment for 10 years vide order dated 13/04/2015. After conviction of the concerned workman the management had given a notice to the Irshad Alam to make a representation in this regard vide letter no. AJG/HRD/10/320/15 dated 30/04/2015 mentioning therein that as per provisions of Certified Standing Order of the Company any workman who was convicted and had been sentenced on the charge of moral turpitude by a Court of law would be liable to be dismissed from the service of the company. The concerned workman had submitted his reply and after finding his reply not satisfactory the company in observance of clause 19(15) of the Company`s Standing Order dismissed Sri Irshad Khan from the service of Tata Steel Company w.e.f. 23/05/2015 vide letter no. AJG/HRD/10/00370/15 dated 18/05/2015.

A prayer has been made to hold that the dismissal of the workman Irshad Alam is legal and justified and he is not entitled to get any relief.

The management by way of rejoinder has stated that the statement made in Para-1, 3, 10 of the statement of claim of the workman are matter of record, the statement made in Para -2, 4, 5, 6, 7, 8, 9, 11, 12 and 13 of the statement of claim of workman are not correct.

6. The concerned workman has submitted rejoinder to the written statement of the management in which it is mentioned that the statement made in Para -1 of the written statement of management, it is submitted that

the present application is legally maintainable, the statement made in Para-2 of the written statement of management is irrelevant and denied, the statement made in Para 3, 4, 5 and 6 of the written statement of management it is submitted that the workman was entangled in a false criminal case, the statement made in Para 7, 8, 9 and 10 of the written statement of management it is submitted that management illegally dismissed the workman.

7. The concerned workman has examined himself as WW-1.

8. The concerned workman has proved the following documents which are marked as:-

Exhibit W-1- Photo Copy of Order dated 15/07/2015 of Hon`ble Jharkhand High Court in Cr. Appeal (DB) No. 301 of 2015/285 of 2015.

Exhibit W-2- Photo Copy of Order dated 02/05.05.2015 passed in Cr. Revision No. 373 of 2015 of Hon`ble Jharkhand High Court, Ranchi.

Exhibit W-3- Photo Copy of Judgment dated 02/02/2015 passed by Session Judge, Dhanbad in Criminal Appeal No. 123 of 2013.

Exhibit W-4- Photo Copy of Order dated 08/08/2011 against the judgment of conviction dated 20/12/2001 and order of sentence dated 20/12/2001 passed by Shri Sharang Dhar Singh, 5th Additional Sessions Judge, Dhanbad in Sessions Trial No. 346 of 1996.

Exhibit W-5- Photo Copy of Judgment dated 03/04/2006 of Judicial Migistrate 1st class, Dhanbad in G.R. No., 857 of 2001.

9. The management has examined only one witness. He is MW-1, Abhinav Sharma.

The management has proved the following documents which are marked as:-

Exhibit M-1- Photo Copy of Certified Standing Order of Tata Steel Ltd. (Total 3 sheets).

Exhibit M-2- Photo Copy of Certified Copy of Judgment of Addl. Sessions Judge-XIII, Dhanbad. (Total 4 sheets) passed in Session Trial No. – 459/02 on 08/04/2015.

Exhibit M-3- Photo Copy of Show Cause Notice No. AJG/HRD/10/320/15 dated 30/04/2015 issued to Irshad Khan, P.No. 219173, Jamadoba Colliery issued by Agent & Chief, Jamadoba Group .

Exhibit M-4- Photo Copy of Letter no. 1252 dated 9.5.2015 of Superintendent of Jail, Dhanbad addressed to Agent (Chief), Tata Steel, Jamadoba Group.

Exhibit M-4/1-Photo Copy of reply of show cause of workman.

Exhibit M-5- Photo Copy of Order of Dismissal No. AJG/HRD/10/370 dated 18/05/2015 of Sri Irshad Khan.

10. The learned lawyer of concerned workman has submitted that the concerned workman namely Irshad Alam @ Irshad Khan had been declared handicapped by the Medical Board in the year 2000 due to “Traumatic amputation”. He has also argued that Sri Shamshad Alam @ Munna had lodged a case against the concerned workman and Hon`ble Additional Judge, Dhanbad in Session Trial No. 459/2002 convicted and sentenced him to undergo imprisonment for 10 years. He has further argued that the concerned workman had preferred appeal against the said judgement before the Hon`ble Jharkhand High Court which was admitted and sentence of the workman was suspended by the Hon`ble Jharkhand High Court but the management in the meantime had dismissed him after issuing a notice. He has also submitted that the dismissal of the concerned workman was illegal and void-abinitio. He has also submitted that the criminal case in which the concerned workman was convicted was not connected with the employment of the workman and had not taken place in course of his duty or during duty hours, so it is not a case of involvement of moral turpitude. He has also submitted that dismissal of the concerned workman is illegal for the reason that as per certified standing order of the company it is mandatory to issue charge-sheet, conduct domestic enquiry, to issue second show cause notice along with enquiry proceeding and report after giving opportunity to reply. He has also argued that in this case no charge-sheet was issued, no enquiry was conducted and no second show cause notice was issued to the workman and the Hon`ble Supreme Court in catena of decision has been pleased to hold that dismissal is illegal and void for non-issuing of second show cause notices. He has also argued that the appeal against the conviction is pending before the Hon`ble High Court in which the Hon`ble High Court has been pleased to hold that all the nine accused deserve the concession of suspension of sentence, during the pendency of appeal, so there is no conviction in the eye of law. He has also argued that the dismissal of concerned workman on the ground of conviction in criminal case without waiting for the decision of Appeal in High Court held illegal and void as reported in 1995 (1) PLJR-P399 and 2004(103) FLR P- 1143 (Allahabad). He has also argued that in the matter of punishment the management had discriminated the case of workman with other workers who had also been convicted in the criminal case, so the dismissal of the concerned workman is illegal and void.

11. The learned lawyer of the management has submitted that the concerned workman namely Irshad Khan @ Irshad Alam was convicted in session trial no. 459/2002 along with others by Additional Session Judge XIII, Dhanbad and the act of the concerned workman comes under the definition of moral turpitude as described by the Hon'ble Allahabad High Court. He has also argued that as per clause 19 (15) of the Certified Standing Orders of Tata Steel Limited any workman who is convicted and sentenced on the charge involving moral turpitude is misconduct and he is liable to be dismissed from the service of the company. He has further submitted that the concerned workman was given chance to represent himself and he had submitted his reply which was not found satisfactory and subsequently he was dismissed from the service. He has also argued that the suspension of execution of sentence does not loss its efficacy merely because appellate court has suspended the execution of sentence. He has further submitted that the concerned workman had been given an opportunity to defend himself and thereafter he was dismissed from the service as per Certified Standing Order, so this case is not maintainable at all.

12. Now, the only point of determination in this case is whether the action of management of Jamadoba Colliery of M/s. Tata Steel Ltd. in dismissing Sri Irshad Alam was legal and justified?

FINDINGS

13. At the outset of discussion it is required to mention here that it is an admitted fact that the concerned workman namely Irshad Khan @ Irshad Alam was an employee Jamadoba Colliery of Jharia Division since 16/02/2005 as Cat-I Mazdoor.

It is also an admitted fact that a criminal case was registered against him as Jorapokhar PS Case No. 264 of 2000 on the basis of Fardbeyan of informant namely Samshad Alam and after conclusion of trial he was convicted and sentenced to undergo rigorous imprisonment for 10 years vide judgement dated 13/04/2015 in Session Trial No. 459/2002 by the Addl. Session Judge-XIII, Dhanbad.

It is further admitted by both the parties that after conviction of the concerned workman, he was served a notice by the management as per Certified Standing Order and he had submitted his reply but the management after finding his reply dismissed him from the service w.e.f. 23/05/2015.

14. Now, the only point which is required to be discussed is whether the management of Jamadoba Colliery has got power to dismiss the concerned workman after conviction and sentencing him to undergo imprisonment?

15. In this regard the WW-1, Irshad Alam has deposed that he had been convicted in Session Trial No. 453 of 2002 and subsequently the management had dismissed him vide order dated 18/05/2015. He has also stated that he had preferred an appeal before the Hon'ble Jharkhand High Court which was registered as Criminal Appeal No. (DB) 301 of 2015 and 285 of 2015. He has further stated that the Hon'ble High Court has been pleased to admit his appeal and has also been pleased to suspend the sentence during the pendency of the appeal. He has also stated that he had made request to the management for his reinstatement but the management had not considered his request. He has also deposed that there are many workers who were similarly convicted in criminal case but they were not dismissed. In the cross-examination he has deposed that he is also known as Irshad Khan and his conviction is still maintained.

16. Further in this regard the MW-1, Abhinav Sharma has deposed that in the Certified Standing Order it is mentioned that any conviction in any court of law in any criminal offence involving moral turpitude is misconduct. He has also stated that after conviction, a show cause notice was issued to the Irshad Alam and the same was served in Dhanbad Jail and he had submitted his reply. He has also stated that since Irshad Khan had been convicted by a Court in a criminal case, so he was dismissed from his service. In the cross-examination he has stated that the criminal case was not connected with the affairs of the Company or his working. He has also stated that in the judgement it has not been mentioned that Irshad Khan was convicted on the ground of moral turpitude. He has also deposed that charge-sheet was not issued against the workman and no departmental enquiry was conducted in this matter. He has further stated the Irshad Khan had informed that appeal against the order of conviction was preferred and the order of conviction has been stayed.

17. Now, coming to the documentary evidence of the concerned workman it appears that Exhibit W-1 is a photo copy of order of Hon'ble Jharkhand High Court passed in Cr. Appeal (DB) No. 301 of 2015 with Cr. Appeal (DB) No. 285 of 2015 in which the Hon'ble High Court in Para -10 has been pleased to mention that all the nine accused deserve the concession of suspension of sentence, during the pendency of appeal, so prayer is allowed. Further the Hon'ble High Court has been pleased to grant bail to all the nine accused persons including the concerned workman Irshad Alam during the pendency of the appeal, Exhibit W-2 is a order of Hon'ble High Court passed in Cr. Revision No. 373 of 2015 in which Md. Shakur was granted bail by the Hon'ble High Court, Exhibit W-3 is a photo copy of judgement passed by Session Judge, Dhanbad in Cr. Appeal No. 123 of 2013 by which the Learned Session Court has been pleased to dismiss the appeal of Md. Sakur, Exhibit W-4 is a photo copy of Judgement passed by the Hon'ble Jharkhand High Court in Cr. Appeal (D.B.) No. 21 of 2002 with Cr. Appeal (D.B.) No. 51 of 2002 in which the appellants were acquitted, Exhibit W-5 is the photo copy of

judgment passed by Sri Prem Shankar, Judicial Megistrate, 1st Class, Dhanbad in which the accused Laddan Khan and Taufique Khan were held guilty for the offence u/s 323, 325, 341, 379/34 on the IPC.

18. On the other hand the documents of the management show that the Exhibit M-1 is photo copy of Standing Orders of Tata Iron & Steel Company, Exhibit M-2 is a judgement of Session Trial No. 459/02 passed by Sri Mahendra Prasad, Addl. Sessions Judge-XIII, Dhanbad u/s 304 Part II/34 IPC and subsequently sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 10,000/-, Exhibit M-3 is a photo copy of letter sent to concerned workman, Exhibit M-4 is the photo copy of letter issued by Superintendent, Mandal Kara, Dhanbad to Agent (Chief) Tata Steel, Jamadoba Group and Exhibit M4/1 is a letter of Irshad Alam to the Agent & Chief, Jamadoba Group, requesting him not to take any disciplinary action against him till the finalisation of the criminal appeal and Exhibit M-5 is the order of dismissal sent to the concerned workman.

19. It is relevant to mention here that under clause 19 of Standing Order of Tata Iron & Steel Company there is a provision that any employee may be suspended, fined or dismissed without notice or any compensation in lieu of the notice if he is found to be guilty of misconduct, provided that suspension without pay, whether as a punishment or pending an enquiry, shall not exceed ten days. A list of misconducts are provided under clause 19 of Standing Order subsequently and under clause 15 it has been mentioned that conviction in any court of law for any criminal offence involving moral turpitude. Further in clause 20, of the standing order of Tata Iron & Steel Company it is mentioned that no orders of punishment by way of suspension, dismissal or fine may be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. It has been also provided that the approval of the Owner, Agent or Divisional Manager (Collieries) of the Company is required in every case of dismissal and when circumstances appear to warrant it that officer may institute separate independent enquiries before dealing with the charges against an employee. It has also been provided that during the period enquiries are being made on account of alleged misconduct, the employee concerned may be suspended.

20. Here in this case Exhibit M-3 is a letter written to Irshad Khan by Agent & Chief, Jamadoba Group seeking his representation within 7 days of the receipt of this letter regarding his conviction vide order dated 13/04/2015 passed by Additional District Judge XIII in Session Trial No. 459/2002 u/s 304/34 of IPC. Further Exhibit M-5 is a letter addressed to Sri Irshad Khan by which he was dismissed from the service on the ground that he had been convicted by the court of law on the charge of commission of an offence under Indian Penal Code involving moral turpitude.

21. It is required to mention here that the concerned workman had preferred an appeal before the Hon'ble Supreme Court and the Hon'ble High court has been pleased to suspend the sentence during the pendency of the appeal.

In this regard it was the contention of the learned lawyer of the workman that the alleged incident was neither connected with the employment nor the alleged occurrence committed within the terms of the Company, so the management has no legal right to take any disciplinary action. The further contention of Ld. Lawyer of management that on suspension of sentence, the workman could not be dismissed.

22. He has relied on the decision of Hon'ble Supreme Court as reported in 1983, 508 (M/s. Glaxo Laboratories Ltd Vs. P.O. L-Court). He has also relied on the decision of Hon'ble Patna High Court as reported in 1995 (1) P.L.J.R- P399 in which it has been categorically mentioned that the power of dismissal cannot be exercised till the appeal against conviction has been disposed of or time limit for filing, so dismissal till the disposal of appeal is illegal.

However it was the contention of the Ld. Lawyer of management that conviction of workman by any Court Law involving moral turpitude is liable to be dismissed even after suspension of sentence by the Appellant Court.

23. In this regard, the learned lawyer of the management has relied on the decision of Hon'ble Supreme Court reported in SCLJ (1994-98) Vol-1 Page 409 in which it has been mentioned that the Appellate Court has power to suspend the execution of sentence and release an accused on bail and when the Appellate Court suspends the execution of sentence and grants bail to an accused, the effect of the order is that sentence based on conviction is for time being postponed, or kept in abeyance during the pendency of appeal.

24. Now in this case on the basis of conviction in a criminal case the concerned workman namely Irshad Alam had been dismissed by the management from the service after serving notice as per Rule 19(15) of Standing Order mentioning the facts that he would be dismissed from the service of the charge of conviction under IPC involving moral turpitude and the concerned workman had submitted his reply.

25. The Hon'ble Supreme Court as reported in Union of India and others Vs. Ramesh Kumar, the Hon'ble Supreme Court has been pleased to hold as follows:- "When the appellant Court suspends the execution of sentences, and grants bail to an accused the effect of the order is that sentence based on conviction is for the

time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under section 389 Cr.P.C. an accused avoids undergoing sentences pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellant Court has suspended the execution of sentence.”

Here in this case the Hon’ble High Court of Jharkhand in Cr. Appeal No. 301/2015 with 285/2015 has been pleased to suspend the sentence of the Irshad Alam during the pendency of the appeal.

26. In view of the decision of Hon’ble Supreme Court as discussed above the effect of the order of suspension of the execution of sentences of the workman Irshad Alam is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal and conviction by Court of Law does not lose its efficacy.

27. Since, there is a decision of Hon’ble Supreme Court on this point, so the decision of Hon’ble Patna High Court as reported in 1995 (1) PLJR- P399 is not applicable in this case.

28. In view of above discussion the dismissal of the concerned workman namely Irshad Alam on the basis of conviction in a (Session Trial No., 459 of 2002 under provision of 19(15) of the standing order is legal and proper.

29. After considering all the facts and circumstances of the case the Tribunal finds that the action of the management of Jamadoba Colliery is legal and justified.

Hence, he is not entitled for any relief.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मेसर्स इनानी मार्बल प्रा. लि.** के प्रबंधन के संबद्ध नियोजकों और **श्री नानजी पुत्र श्री हीरालालजी जाति मीणा** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर** के पंचाट (**संदर्भ संख्या 63/2015**) को प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. (63/2015)**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s Inani Marble Pvt. Ltd. and Shri Nanji S/o Shri Heeralal Ji Jati Meena.**

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 63/2015 I.T.R. (C)

श्री नानजी पुत्र श्री हीरालालजी जाति मीणा, उम्र वयस्क, पद मिस्त्री, मेसर्स इनानी मार्बल प्र.लि. मसारों की ओबरी, निवासी गांव रिजवा घाटी कागदर, माण्डवा फला, तहसील ऋषभदेव, जिला उदयपुर

— प्रार्थी

विरुद्ध

मेसर्स इनानी मार्बल प्रा.लि. मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर

— विपक्षी

उपस्थित :-

प्रार्थी की ओर से :- श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :- कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 12.07.2022

प्रार्थी नानजी द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक ऐजे-5(96) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 01.02.1995 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाइम, ग्रेच्युटी एवं पी.एफ.जैसे न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से 10 मई 2014 तक हड़ताल पर थे।

दिनांक 08 मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्री आयुक्त (केन्द्रीय) अजमेर की मध्यस्थता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 11.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 11.05.2014 को प्रार्थी जब काम करने के लिए जब खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवायें हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवायें दी हैं। क्षेत्र के सभी श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 300/-रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 700/-रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पे दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्ति का नोटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्ति किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 1995 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएँ दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उससे 8 घण्टे के बजाय 12 घण्टे तक काम करवाया जाता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 20.01.2017 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से नानजी मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स इनानी मार्बल प्र.लि. मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी श्री नानजी पुत्र श्री हीरालालजी जाति मीणा, उम्र वयस्क, पद मिस्त्री, मेसर्स इनानी मार्बल प्र.लि. मसारों की ओबरी, निवासी गांव रिजवा घाटी कागदर, माण्डवा फला, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 11.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 1995 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 11.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 11.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की और से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तरत, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी श्री श्री नानजी पुत्र श्री हीरालालजी मीणा को विपक्षी संस्थान मेसर्स इनानी मार्बल प्र.लि. मसारां की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा दिनांक 11.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 11.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(96)/2014-आरएलसी दिनांक 15.09.2014 के क्रम में भेजा जावें।

शिव कुमार शर्मा, न्यायाधीश

पंचाट आज दिनांक 12 जुलाई 2022 को खुले न्यायालय में लिखाया जाकर सुनाया गया ।

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1148.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मेसर्स सिद्धार्थ ग्रीन मार्बल** के प्रबंधन के संबद्ध नियोजकों और **श्री दौलत पुत्र श्री मणीलाल जी जाति मीणा** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर के पंचाट (संदर्भ संख्या 58/2015)** को प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2015) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s Siddharth Green Marble and Shri Daulat S/o Shri Manilal Ji Jati Meena**.

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 58/2015 I. T. R. (C)

दौलत पुत्र श्री मणीलाल जी मीणा जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर (राज.)

— प्रार्थी

विरुद्ध

मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर (राज.)

— विपक्षी

उपस्थित :-

प्रार्थी की ओर से :- श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :- कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 16.08.2022

प्रार्थी दौलत द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक एजे-5(119) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार हैं कि प्रार्थी विपक्षी की खदान में दिनांक 05.01.2007 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाईम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से कैसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से 10 मई 2014 तक हड़ताल पर थे।

मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर की अध्यक्षता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 07.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 07.05.2014 को प्रार्थी जब काम करने के लिए खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवा है तथा उसने पूरी लगन एवं निष्ठा से खान में सेवाएं दी हैं। क्षेत्र के सभी श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/-रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 350/-रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पेय दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 7 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्त का नाटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्त किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2007 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएँ दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उसे 8 घण्टे के बजाय 12 घण्टे तक काम करना पड़ता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 22.06.2017 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से दौलत मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी दौलत पुत्र श्री मणीलाल जी मीणा जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 07.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवकाल सन् 2007 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 07.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की और से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तरता, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में

50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी दौलत पुत्र श्री मणीलाल जी मीणा जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर (राज.) को विपक्षी संस्थान मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर (राज.) द्वारा दिनांक 07.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि का भुगतान 2 माह में करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक ऐजे-5(119)/2014-आरएलसी दिनांक 15.09.2014 के क्रम में भेजा जावे।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मेसर्स सिद्धार्थ ग्रीन मार्बल** के प्रबंधन के संबद्ध नियोजकों और **श्री कन्हैयालाल पुत्र श्री गौतम जाति मीणा** के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 66/2015)** को प्रकाशित करती है।

[सं. जेड-16025/04/2022-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 66/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s Siddharth Green Marble** and **Shri Kanhaiya Lal S/o Shri Gautam Jati Meena**.

[No. Z-16025/04/2022-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 66/2015 I.T.R. (C)

कन्हैयालाल पुत्र श्री गोतम जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर (राज.)

— प्रार्थी

विरुद्ध

मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर (राज.)

— विपक्षी

उपस्थित :-

प्रार्थी की ओर से :- श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :- कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 12.07.2022

प्रार्थी कन्हैयालाल द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक एजे-5(117) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया, लेकिन काफी समय व्यतीत हो जाने के बावजूद भी भारत सरकार के श्रम विभाग नई दिल्ली से रेफरेन्स प्राप्त न होने पर प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 05.03.2005 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाइम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से मई 2014 तक हड़ताल पर थे।

मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर की अध्यक्षता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 07.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 07.05.2014 को प्रार्थी जब काम करने के लिए खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवा है तथा उसने पूरी लगन एवं निष्ठा से खान में सेवाएं दी हैं। क्षेत्र के सभी श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/-रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 350/-रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पेय दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्ति का नोटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्ति किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2005 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएँ दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उसे 8 घण्टे के बजाय 12 घण्टे तक काम करना पड़ता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 25.11.2016 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से कन्हैयालाल मीणा का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी कन्हैयालाल पुत्र श्री गोतम जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 07.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 2005 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 07.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी कन्हैयालाल पुत्र श्री गोतम जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर (राज.) को विपक्षी संस्थान मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर (राज.) द्वारा दिनांक 07.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(117)/2014-आरएलसी दिनांक 15.09.2014 के क्रम में भेजा जावे।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मेसर्स बिरला मार्बल** के प्रबंधन के संबंध में नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 28/2015)** प्रकाशित करती है।

[सं. एल-28011/18/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 28/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s Birla Marble** and **The President, Janjati Khan Mazdoor Sangh**.

[No. L-28011/18/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 28/2015 आई.टी.आर. केन्द्र

अनवान:— अध्यक्ष, जनजाति खान मजदूर संघ बनाम मै. बिरला मार्बल

अधिसूचना नं. :- एल-28011/18/2015-आईआर(एम) दिनांक 22.06.15

निर्णय

29.08.2022

प्रार्थी अभि. रामदास उप.।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक अदालत की भावना से प्रेरित होकर 'Not Press' किया तथा कोई कार्यवाही नहीं चाही।

प्रार्थी द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है। प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है।

पंचाट सूचनार्थ भारत सरकार को भेजी जावे।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स नारन मार्बल प्रा. लि.** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 12/2015)** प्रकाशित करती है।

[सं. एल-28011/43/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 12/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Nanan Marble Pvt. Ltd. and The President, Janjati Khan Mazdoor Sangh.**

[No. L-28011/43/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 12/2015

अधिसूचना नम्बर :- L-28011/43/2015-IR(M) दिनांक 23.06.2015

अध्यक्ष, जनजाति खान मजदूर संघ बनाम मैनेजर, मै. नारन मार्बल प्रा० लि०

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 09.03.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स राणावत मार्बल** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मज़दूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 23/2015)** प्रकाशित करती है।

[सं. एल-28011/9/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 23/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Ranavat Marble** and **The President, Janjati Khan Mazdoor Sangh**.

[No. L-28011/9/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 23/2015

अधिसूचना नम्बर :- L-28011/9/2015-IR(M) दिनांक 22.06.2015

अध्यक्ष, जन जाति खान मजदूर संघ बनाम मैनेजर मै. राणावत मार्बल

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 28.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1153.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स ग्रीन किंग** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मज़दूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 17/2015)** प्रकाशित करती है।

[सं. एल-28011/41/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 17/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Green King and The President, Janjati Khan Mazdoor Sangh.**

[No. L-28011/41/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 17/2015

अधिसूचना नम्बर :- L-28011/41/2015-IR(M) दिनांक 23.06.2015

अध्यक्ष, जन जाति खान मजदूर संघ **बनाम** मैनेजर, मै. ग्रीन किंग**12.03.2022**

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 28.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1154.— औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स राठी ग्रीन मार्बल प्रा. लि.** के प्रबंधतंत्र के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर** पंचाट (**संदर्भ संख्या 26/2015**) प्रकाशित करती है।

[सं. एल-28011/15/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 26/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s. Rathi Green Marble Pvt. Ltd. and The President, Janjati Khan Mazdoor Sangh.**

[No. L-28011/15/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 26/2015

अधिसूचना नम्बर :- L-28011/15/2015-IR(M) दिनांक 22.06.2015

अध्यक्ष, जन जाति खान मजदूर संघ बनाम मैनेजर, मै. राठी ग्रीन मार्बल प्रा०लि०

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 25.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1155.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स मारुती मार्बल** के प्रबंधन के संबंध में नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर** पंचाट (संदर्भ संख्या **27/2015**) प्रकाशित करती है।

[सं. एल-28011/17/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 27/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Maruti Marble** and **The President, Janjati Khan Mazdoor Sangh**.

[No. L-28011/17/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 27/2015

अधिसूचना नम्बर :- L-28011/17/2015-IR(M) दिनांक 22.06.2015

अध्यक्ष, जन जाति खान मजदूर संघ बनाम मैनेजर मै. मारुति मार्बल

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 25.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य
लोक अदालत

अध्यक्ष,
लोक अदालत
शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1156.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स रिषभ मार्बल प्रा. लि.** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर** पंचाट **(संदर्भ संख्या 32/2015)** प्रकाशित करती है।

[सं. एल-28011/16/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2015) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Risabh Marble Pvt. Ltd. and The President, Janjati Khan Mazdoor Sangh.**

[No. L-28011/16/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 32/2015

अधिसूचना नम्बर :- L-28011/16/2015-IR(M) दिनांक 22.06.2015

अध्यक्ष, जन जाति खान मजदूर संघ बनाम मैनेजर रिषभ मार्बल प्रा.लि.

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 25.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1157.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स रिषभ बर्दिया** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 33/2015)** प्रकाशित करती है।

[सं. एल-28011/45/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 33/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Risabh Bardiya Marble** and **The President, Janjati Khan Mazdoor Sangh**.

[No. L-28011/45/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 33/2015

अधिसूचना नम्बर :- L-28011/45/2015-IR(M) दिनांक 23.06.2015

अध्यक्ष, जन जाति खान मजदूर संघ बनाम मै श्री रिषभ बर्दिया मार्बल

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 25.02.2022 को लोक अदालत की भावना से प्रेरित होकर **Not Press** किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1158.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स अग्रवाल एक्सपोर्ट मार्बल** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 43/2015)** प्रकाशित करती है।

[सं. एल-28011/34/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 43/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s Agarwal Export Marble** and **The President, Janjati Khan Mazdoor Sangh**.

[No. L-28011/34/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 43/2015

अधिसूचना नम्बर :- L-28011/34/2015-IR(M) दिनांक 22.06.2015

अध्यक्ष, जनजाति खान मजदूर संघ **बनाम** मैनेजर, मै. अग्रवाल
एक्सपोर्ट मार्बल

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 09.03.2022 को लोक अदालत की भावना से प्रेरित होकर **Not Press** किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में **No Dispute award'** कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1159.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैनेजर, मेसर्स एच.एम.टी. स्पेन्टाइन मार्बल** के प्रबंधन के संबद्ध नियोजकों और **अध्यक्ष, जनजाति खान मजदूर संघ** बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर पंचाट (संदर्भ संख्या 52/2015)** प्रकाशित करती है।

[सं. एल-28011/10/2015-आईआर (एम)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 52/2015**) of the **Industrial Tribunal/Labour Court, Udaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **The Manager, M/s H.M.T. Spentain Marble** and **The President, Janjati Khan Mazdoor Sangh**.

[No. L-28011/10/2015-IR (M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R(C). प्रकरण संख्या 52/2015

अधिसूचना नम्बर :- L-28011/10/2015-IR(M) दिनांक 23.06.2015

अध्यक्ष, जनजाति खान मजदूर संघ बनाम मैनेजर, मै. एच.एम.टी. स्पेन्टाइन मार्बल

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 09.03.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार, शर्मा, न्यायाधीश

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1160.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टाटा स्टील लिमिटेड के प्रबंधन के संबद्ध नयोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण- सह - श्रम न्यायालय नंबर 1, धनबाद** के पंचाट (**संदर्भ संख्या 36/2013**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/35/2013-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No.36/2013**) of the **Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD** as shown in the Annexure, in the industrial dispute between the Management of **Tata Steel Ltd** and their workmen, received by the Central Government on **10/10/2022**.

[No. L-20012/35/2013/IR (CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.Reference: No. 36/2013

Employer in relation to the management of Jamadoba Colliery of M/s. Tata Steel Ltd.

AND

Their workman.

Present: **Shri Dinesh Kumar Singh** Presiding Officer.Appearances:

For Employer :- Sri D.K. Verma, Advocate.

For workman :- Sri Ashok Singh,(in person).

State : Jharkhand.

Industry:- Coal

Dated 27/09/2022

AWARD

By Order No.L-20012/35/2013- (IR(CM-I)) dated 22.08.2013, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of 6&7 Pits Colliery, Jamadoba of M/s. Tata Steel Ltd., in not protecting the wages of Sri Kanchan Yadav and Shri Ashok Kumar Singh by way of fixing less wages, while coversion from P.R. Stone Cutter to T.R. Stone Cutter is legal and justified? To what relief are the workmen concerned entitled to?”

2. After receipt of the reference, both the parties were noticed. The Organizing Secretary, R.C.M.S. 6&7 Pits Jamadoba has filed his written statement of claim on 23/09/2013 and the management of 6&7 Pits Colliery, Jamadoba of M/s. Tata Steel Ltd. has filed its written statement cum rejoinder on 15/05/2014.

The Organizing Secretary, R.C.M.S. 6&7 Pits Jamadoba has filed rejoinder to the written statement of the management on 11/09/2014.

3. The claim of the sponsoring union as per its written statement is as follows:-

That the concerned workmen namely Sri Kanchan Yadav and Sri Ashok Kumar Singh were appointed as piece-rated Stone Cutter w.e.f. 21/04/1983 and they were working as a piece-rated Stone Cutter continuously but all of sudden the management vide letter dated 14/17-12-2011 re-designated the concerned workmen as time-rated Stone Cutter w.e.f. 21/12/2011 on the ground of rationalisation of the manpower. The management arbitrarily and whimsically fixed the basic rate of pay of the concerned workman as Rs. 675.17/- in the scale of Rs. 399.26 – 3% - 721.11, so the management had changed the service condition and fixed the earning and basic pay to the prejudice of the workmen which is not in accordance with the law. The basic pay and the daily earning of workmen cannot be changed without complying the mandatory provision of section 9A of the I.D. Act, 1947, so the management has no right legal or otherwise to change the designation and daily earning as well as basic pay of the concerned workmen. The management had not issued any notice under section 9A of the Act before changing the designation and daily earning. The concerned wokmen had represented before the management but it had no effect. The concerned workmen had suffered a huge financial loss because of the act of the management and the action of management fixing less wages by changing designation was illegal, arbitrary and unjustified and against the principle of natural justice.

A prayer has been made to pass an Award in their favour.

4. The case of the management as per its written statement is as follows:-

That the present reference is not maintainable either in law or in facts. The concerned workmen namely Sri Kanchan Yadav and Sri Ashok Kumar Singh, were employed w.e.f. 21/04/1983 as Piece Rated Stone Cutter at 6&7 Pits Colliery and because of rationalization of manpower at 6&7 Pits Colliery, the requirement of Piece Rated Stone Cutter had been reduced, so in order to engage them gainfully, the management had issued a

proposal to the workmen regarding re-designation and placing them to work as Time Rated Stone Cutter Category-IV w.e.f. 21/12/2011 vide letter no. 6&7/MRO/F-18/1450/11 dated 14/17-12-2011 on acceptance of the terms and conditions mentioned in the letter. The aforesaid letter had been sent to both the concerned workmen mentioning therein that their basic rate had been fixed at Rs. 675.17 per day after protecting their SPRA in the scale of Rs. 399.26- 3%- 721.11. It had also been mentioned in the aforesaid letter that if the terms and conditions mentioned therein were acceptable to them, then they would report to the Sr. Manager (Operation) 6&7 Pits Colliery for their duty after signing the duplicate copy of the said letter. The concerned workmen had accepted the proposal of management by signing of duplicate copy of the letter as token of acceptance of the same and started working as Time Rated Stone Cutter w.e.f. 21/12/2011. The workmen were satisfied with their wages and were working as Time Rated Stone Cutter Category-IV for one year but the Trade Union Leader unnecessarily egitated the case of the concerned workmen.

A prayer has been made to pass an Award in its favour.

The management by way of rejoinder has stated that the statement made in Para-1, 2 and 13 of the written statement of union are matter of records and the statement made in Para-3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 to 17 of the written statement of union are not correct.

5. The sponsoring union has filed rejoinder to the written of management and has stated that the statement made in Para-2, 4, 5 and 6 of the written of the management are false and denied and the statement made in Para-3 of the written statement of management is matter of record.

6. The sponsoring union has examined only one witness. He is WW-1, Ashok Singh.

The WW-1, Ashok Singh has deposed that he is one of the concerned workmen in this reference case and he is also adducing evidence on behalf of other concerned workmen. He has also stated that he and other concerned workmen were appointed as a Piece Rated Stone Cutter w.e.f. 21/04/1983 and since then they were working as Piece Rated Stone Cutter but the management vide letter dated 14/17-12-2000 changed their designation as Time Rated Stone Cutter w.e.f. 21/12/2011 on the ground of rationalisation. He has further deposed that the management had illegally fixed their basic pay at Rs. 675.17 in the scale of 399.26 - 3% - 721.11 and by this act management had changed their designation and reduced their basic pay and daily earning without giving any notice u/s 9A of the I.D. Act at the fag end of their service. He has further stated that before affecting the change, their earning/daily basic wages with SPRA was approximately Rs. 990-1000 per day and because of the this change they are suffering from huge financial loss.

In the cross-examination he has stated that management had forcibly given an order to him to work as Time Rated workman from piece rated workman in 2011 and the Exhibit M-1 is the said letter. He has denied the suggestion that his claim is not justified.

7. The sponsoring union has not proved any documents in support of its case.

8. The management has examined only one witness. He is MW-1, Shiv Shankar.

The MW-1, Shiv Shankar has deposed that Sri Kanchan Yadav and Sri Ashok Kumar Singh, were employed as Piece Rated Stone Cutter w.e.f. 21/04/1983 at 6&7 Pits Colliery and management had issued a proposal to the concerned workmen that they were re-designated and placed to work as Time Rated Stone Cutter (Cat-IV) w.e.f. 21/12/2011 vide letter no. 6&7/MRO/F-18/1450/11 dated 14/17-12-11 on acceptance of terms and conditions as mentioned in the letter. He has also stated that it was clearly mentioned in the letter that their basic rate had been fixed at Rs. 675.17 per day after protecting their SPRA in the scale of Rs. 399.26 – 3% - 721.11 and if the terms and conditions were acceptable to them they would report to Sr. Manager (Operation) 6&7 Pits Colliery. He has also deposed that both the concerned workman had accepted the proposal of management by way of signing of duplicate copy and they started working as Time Rated Stone Cutter w.e.f. 21/12/2011 without raising any objection, so the workmen are not entitled to any relief.

In the cross-examination he has deposed that before converting to Piece Rated Worker to Time Rated Worker the management had not issued a notice u/s 9A of the I.D. Act as the nature of both the work was same. He has denied the suggestion that due to conversion the earning of the workmen were reduced and they have documents to show that the workmen had accepted the terms and conditions.

9. The management has proved the following documents in support of its case which are marked as:-

Exhibit M-1- Photo Copy of Letter dated 14/17-12-11 issued by Head, 6&7 Pits Jamadoba Colliery addressed to Sri Kanchan Yadav, P/R. Stone Cutter 6&7 Pits Jamadoba Colliery regarding his acceptance of the terms and conditions of the letter.

Exhibit M-2-Photo Copy of Letter dated 14/17-12-11 issued by Head, 6&7 Pits Jamadoba Colliery addressed to Sri Ashok Singh regarding acceptance of his terms and conditions as mentioned in the letter.

Exhibit M-3- Original Copy of Service Record of Ashok Singh.

Exhibit M-4- Original Copy of Service Record of Kanchan Yadav.

10. The learned lawyer appearing on behalf of the concerned workmen has submitted before the Court that both the workmen namely Sri Kanchan Yadav and Ashok Kr. Singh were appointed as Piece Rated Stone Cutter on 21/04/1983 and they were working continuously on the same post but after 28 years, the management re-designated them as Time Rated Stone Cutter w.e.f. 21/12/2011 without following the mandatory provision of section 9A of the I.D. Act. He has also argued that because of the re-designation the workmen had suffered huge financial loss. He has further argued that the concerned workmen namely Ashok Kumar Singh had been examined and he has supported his case and the management had examined only one witness who has admitted that before conversion from Piece Rated Stone Cutter to Time Rated Stone Cutter, no notice u/s 9A of I.D. Act was given to the workmen as the nature of work was same, so the action of the management is illegal and void ab initio. He has also submitted that the nature of job of Piece Rated Stone Cutter and Time Rated Stone Cutter are same, so there was no reason to change the designation. He has further submitted that the order of Hon'ble Supreme Court in several cases has been pleased to hold that the condition of service cannot be changed without notice u/s 9A of the I.D. Act.

11. On the other hand the learned lawyer of management has submitted that the concerned workmen were served notice mentioning therein that their basic rate had been fixed at Rs. 675.17 per day after protecting their SPRA in the scale of Rs. 399.26 – 3% - 721.11 and they were requested that if the terms and conditions were acceptable to them then they would report to Sr. Manager (Oprn.), 6&7 Pits Colliery for their duty. He has also submitted that both the employees had accepted the proposal of the management by way of signing the duplicate copy of letter and they started working as Time Rated Stone Cutter w.e.f. 21/12/11.

12. Now, the only point of determination in this reference is whether the action of the management of 6&7 Pits Colliery, Jamadoba of M/s. Tata Steel Ltd, in not protecting the wages of Sri Kanchan Yadav and Sri Ashok Kumar Singh by way of fixing less wages, while conversion from P.R. Stone Cutter to T.R. Stone Cutter is legal and justified?

FINDINGS

13. At the outset of discussion it is required to mention here that it is an admitted fact that both the workers namely Sri Kanchan Yadav and Sri Ashok Kumar Singh were working as Piece Rated Stone Cutter w.e.f. 21/04/1983 and they continued on the same post but on 21/12/2011 their services were converted into Time Rated Stone Cutter.

14. Now, the question arises whether the management of 6&7 Pits Colliery, Jamadoba of M/s. Tata Steel Ltd had fixed less wage while converting the services of Kanchan Yadav and Ashok Kumar Singh from Piece Rated Stone Cutter to Time Rated Stone Cutter on 21/12/2011.

15. It is the case of the sponsoring union that the management had arbitrarily and whimsically fixed the basic rate of pay of concerned workmen as Rs. 675.17 in the scale of Rs. 399.26 – 3% - 721.11 which amounts to change in the service condition and deduction of the earning and basic pay of the concerned workmen which is violation to section 9A of the I.D. Act.

16. On the other hand it is the case of the management that the basic wages of the concerned workmen have been fixed at rate of 675.17 per day after protecting their SPRA in the scale of Rs. 399.26 – 3% - 721.11 and in this regard letters were sent to the both the concerned workmen to which they had accepted the terms and conditions and thereafter their services were converted to Time Rated Stone Cutter w.e.f. 21/12/2011.

17. In this regard WW-1, Ashok Singh has deposed that his designation had been changed from Piece Rated Stone Cutter to Time Rated Stone Cutter w.e.f. 21/12/2011 and had illegally fixed their basic pay at the rate of Rs. 675.17 in the scale of Rs. 399.26 – 3% - 721.11 without giving notice u/s 9A of the I.D. Act as a result they were suffering huge financial loss. He has also stated that before affecting change their earning has Rs. 990-1000 per day.

The MW-1, Shiv Shankar has deposed that both the concerned workmen were working as Piece Rated Stone Cutter at 6&7 Pits Colliery and management had issued a proposal to them for their re-designation as Time Rated Stone Cutter which was accepted by them and subsequently their basic rate has been fixed at Rs. 675.17 per day after protecting their SPRA in the scale of Rs. 399.26 – 3% - 721.11.

18. Now, coming to the documentary evidence of both the parties it is relevant to mention here that the sponsoring union has not proved any documents in support of its case.

However, the management has proved some documents in support of its case.

After analysing the documents of management it appears that Exhibit M-1 is a letter of management of 6&7 Pits Jamadoba Colliery sent to Kanchan Yadav seeking his acceptance of the terms and conditions of the

letter, the Exhibit M-2 is a letter issued by the management of 6&7 Pits Jamadoba Colliery to Ashok Singh seeking his acceptance of the terms and conditions as mentioned in the letter, Exhibit M-3 is service record of Ashok Singh and Exhibit M-4 is the service record of Kanchan Yadav.

19. After examining the Exhibit M-1 and Exhibit M-2 it is very much clear that the management of 6&7 Pits Jamadoba colliery had issued letter to Kanchan Yadav and Ashok Singh respectively regarding change of their designation from Piece Rated Stone Cutter to Time Rated Stone Cutter Category-IV with basic wage of pay Rs. 675.17 per day protecting their SPRA in the scale of Rs. 399.26 – 3% - 721.11 and if the conditions were acceptable to them then report for their duty to Sr. Manager (Oprn.) of their colliery after putting signature on duplicate copy of letter. It appears that Kanchan Yadav and Ashok Kumar Singh had put their signatures on duplicate copy of the respective letters and joined the duty, so it appears that both the concerned workmen had accepted the terms and conditions regarding change of their designation. Further after going through the Exhibit M-3 which is service excerpts of Ashok Kumar Singh, it appears that on 21/12/2011 rate of payment was fixed at Rs.675.17, on 01/07/2012 it was revised to Rs. 695.43 and on 21/12/2012 it was fixed as Rs. 716.29 after his conversion from Piece Rated Stone Cutter to Time Rated Stone Cutter. Moreover as per Exhibit M-4 the rate of wages of Kanchan Yadav was fixed as Rs. 675.17 on 21/12/2011, it was revised to Rs.695.43 on 01/07/2012 and it was further revised on 21/12/2012 as Rs. 716.29 after his conversion from Piece Rated Stone Cutter to Time Rated Stone Cutter.

20. The concerned workmen have filed the pay slip of March 2012 of Kanchan Yadav and January 2012 of Ashok Kumar Singh and both the pay slip were of after the change of designation of concerned workmen from P.R. to T.R. The concerned workmen have not filed any documents of their wages before change of their designation from P.R. To T.R. to show that their wages had been fixed less then what they were getting earlier.

21. The WW-1 Ashok Singh in his evidence has deposed that before affecting change their earning were Rs. 990-1000 per day but no such documents were filed before the Tribunal.

In absence of any such documents filed by the concerned workmen on this point regarding payment of more wages before their conversion from P.R. to T.R. it will be presumed that the wages of concerned workmen were not fixed less than the earlier after change from Piece Rated Stone Cutter to Time Rated Stone Cutter.

22. The learned lawyer of concerned workman has argued that the designation and wage of workmen were changed without giving notice to them u/s 9A of the I.D. Act.

In this regard it is relevant to mention here that the management had issued notice to both the workmen separately (Exhibit M-1 and Exhibit M-2) and they had accepted the change of service condition by putting their signature, so the argument of the learned lawyer of concerned workmen is not tenable.

23. After considering all the facts and circumstances of the case the Tribunal comes to the conclusion that the management of 6&7 Pits Jamadoba Colliery of M/s. Tata Steel Ltd. had protected the wages of concerned workmen namely Kanchan Yadav and Ashok Kumar Singh by way of fixing their wages while conversion from Piece Rated Stone Cutter to Time Rated Stone Cutter is legal and justified.

Hence, the concerned workmen are not entitled to any relief.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय** नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 62/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/96/2008-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 62/2008**) of the **Central Government Industrial Tribunal-cum-Labour Court No.1, DHANBAD** as shown in the Annexure, in the industrial dispute between the Management of **B.C.C.L.** and their workmen, received by the Central Government on **10/10/2022**.

[No. L-20012/96/2008/IR (CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 62/2008

Employer in relation to the management of Mines Rescue Station, Dhansar of M/s. BCCL.

AND

Their workman.

Present: **Shri Dinesh Kumar Singh** Presiding Officer.

Appearances:

For Employer :- Sri D.K. Verma, Advocate.

For workman :- Sri N.G. Arun, Representative.

State : Jharkhand.

Industry:- Coal

Dated 28/09 /2022

AWARD

By Order No.L-20012/96/2008- (IR(CM-I)) dated 03.12.2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“i) Whether the action of the Management of Mines Rescue Station of M/s. BCCL, Dhansar in not regularizing the services of Shri Saroj Kumar Singh as Store Keeper/Assistant Store Keeper is justified and legal? ii) To what relief is the concerned workman entitled and from what date?”

2. After receipt of the reference, both the parties were noticed. The Representative of concerned workman/union has filed his written statement of claim on 13/02/2009 and the management of Mines Rescue Station, Dhanbad has filed its written statement cum rejoinder on 17/06/2009.

The Representative of concerned workman/union has filed rejoinder to the written statement of the management on 21/10/2009.

3. The case of the claim as per written statement of the sponsoring union is as follows:-

That the concerned workman namely Saroj Kumar Singh bearing P No. 0133665 was appointed as General Mazdoor on 22/11/1994 and posted at Bararee Colliery but he had been transferred to Mines Rescue Station, Dhansar on 22/01/1998 where he was deployed as Assistant Store Keeper because of exigency of work. After deployment in the store of the Mines Rescue Station, Dhansar, the concerned workman had been continuously performing his job of Asstt. Storekeeper up to 26/02/2004 and after superannuation of Sri Anil Kumar Chakraborty, Sr. Store Keeper he was given fulfilled charge of whole store on and from 29/02/2004 vide office order no. Rescue/1048 Dt- 26/2/2004. In the meantime Sri Amal Kumar Bhattacharji, Sr. Store Keeper had joined at Mines Rescue Station, Dhansar then concerned workman was assigned to look after the job of Area Store vide office order no. Rescue/674 Dt-01/12/2004. After that on 28/29-12-2004 one office order no. Rescue/765 was issued under the signature of General Manager (Rescue) in which it had been instructed that Saroj Kumar Singh, the concerned workman shall handover the charge of both stores to Sri Bhattacharji and he would assist Sri Bhattacharji in day to day work. Subsequently vide office order no. Rescue/943 dated 26/28-2-2006 was issued by General Manager(Rescue) by which it was instructed to Sri Saroj Kumar Singh to assist Sri Bhattacharji in his day to day work, so in this way the concerned workman had worked for more than 10 years as Store Keeper/Sr. Store Keeper with entire satisfaction of the management and unblemished record. The management had assured the workman/sponsoring union that the case of the workman/sponsoring union

would be settled amicably but in spite of their repeated assurance, the management did not regularise him as Store Keeper/Asst. Store Keeper and the management had given him grade of Hindi Typist as Grade-III on 05/01/2004. The concerned workman had claimed his regularisation as Store Keeper in the management of Rescue Station, Dhansar but he was transferred to Sudamdih which is very illegal and arbitrary. The concerned workman had undergone huge loss of Rs. 3000 per month from last 10 years and had not been regularised in proper grade. The sponsoring union has raised the dispute before the ALC, Dhanbad and subsequently the reference was made. The sponsoring union had made claim to regularise the service of Sri Saroj Kumar Singh as Store Keeper with retrospective effect i.e. 02/02/1998 and Sr. Store Keeper w.e.f. 2.2.2004 with all fringe and consequential benefits.

4. The case of the management as per its written statement is as follows:-

That the concerned workman namely Saroj Kumar Singh was appointed in the service of the Company as General Mazdoor in Category-1 on 22.11.1994 and he was transferred on his own request from Bararee Colliery, Lodna Area to Mines Rescue Station, Dhansar as General Mazdoor Category-1 where he had joined on 20/10/1997. After that the concerned workman had applied for the post of Hindi Typist (Trainee) and he was selected and posted as Hindi Typist (Trainee) w.e.f. 05/01/2004. After successful completion of his training period he was regularised as Hindi Typist in Clerical Grade-II w.e.f. 18/11/2005. The concerned workman was never deployed to work as Store Keeper (Assistant Store Keeper). The Store Personnel Cadre has different line of promotion than that of General Clerical Cadre. The post of Assistant Store Keeper is in Clerical Grade-II through D.P.C. of those who have put in 3 years experience as Store Issue Clerk in Gr. III and the post of Store Keeper is in Clerical Gr. I and promoted through D.P.C. of those who have put in 3 years experience as Asst. Store Keeper in Clerical Grade-II and so on, so the claim of the concerned workman for his regularisation as Store Keeper/Asst. Store Keeper does not arise. The concerned workman was transferred to Headquarters, Koyla Bhawan vide office order no. 7241-50, dated 13/14.5.2008 and was regularised vide office order no. Rescue/102, dated 20/05/2008 but he did not comply the order. The concerned workman was subsequently posted at RRRRT, Sudamdih vide order no. 347, dated 01/08/2008 and the concerned workman had tried to pressurise the management for his regularisation as Store Keeper and for withdrawal of his transfer order. The concerned workman had threatened the management of his self immolation in front of the office the General Manager (Rescue) on 16/09/2008 but after intervention of the District Authority, CID wing etc. he had dropped his programme. The concerned workman is not entitled for regularisation in another cadre, so the claim of the concerned workman is not maintainable.

A prayer has been made to pass an Award in favour of management.

The management by way of rejoinder has mentioned that the statement made in Para 1 of the written statement of workman is matter of record, the statement made in Para 2, 4, 5, 6, 7, 8, 9, 11, 12, 13 and 16 of the written statement of workman are not correct, the statement made in Para 3 of the written statement of workman is not relevant, the statement made in Para 10 of the written statement of workman is admission about getting the post of Hindi Typist which was done as per his consent/application for the said post, the statement made in Para 14 of the written statement of workman is without any basis and without supported with documents etc and the statement made in Para 15 of the written statement of workman is about raising of industrial dispute.

5. The concerned workman has filed rejoinder to the written statement of the management in which it has been stated that the statement made in Para 1 of the written of management is schedule of reference, the statement made in Para 2, 3(1), 3(VII), 3(VIII), 3(IX), 3(X), 4, 5, 6, 7 and 8 of the written statement of management are matter of record, the statement made in Para 3(II), 3(III), 3(IV), 3(V), 3(VI), 3(XI), 10, 11, 12 and 13 of the written statement of management are denied and the statement made in Para 9 is not properly stated before this court.

6. The concerned workman has examined only one witness. He is himself WW-1, Saroj Kumar Singh.

7. The concerned workman has proved the following documents which are marked as:-

Exhibit W-1- Copy of Office Order No. MRSP:PER:00:98:1147 dated 27/01/1998 issued by A. Samanta.

Exhibit W-2- Copy of Office Order No. Rescue/1048, dated 26/02/2004 issued by J.Banerjee, General Manager (Rescue).

Exhibit W-3- Copy of Office Order No. 554 dated 08/10/2004 issued by J.Banerjee, General Manager (Rescue).

Exhibit W-4- Copy of Office Order No. Rescue/674 dated 1/12/2004 issued by J. Banerjee, General Manager (Rescue).

- Exhibit W-5- Copy of Office Order No. Rescue/765 dated 28/29.12.2004 issued by J.Banerjee, General Manager (Rescue).
- Exhibit W-6- Copy of Office Order No. Rescue/943 dated 26/28.02.2005 issued by B.Rama Rao, General Manager (Rescue).
- Exhibit W-7- Copy of Letter No. Rescue/04/1862-64 dated 25/11/2004 of Dy. Chief Mining Engineer, Mines Rescue Station, Dhansar addressed to Sri Saroj Kumar Singh, Hindi Typist (Trg) Gr-III, Mines Rescue Station, Dhansar.
- Exhibit W-8 Series - Copy of Letter dated 27/10/2004 of Saroj Kumar Singh, Hindi Typist/Store Keeper MRS, Dhansar addressed to General Manager, MRS, Dhansar, Dhanbad including Store Ledger. (Total 13 Pages)
- Exhibit W-9- Copy of Office Order No. 10759-65 dated 23/24.07.2008 issued by S.K. Sinha, Dy. CPM (MP&R/C).
- Exhibit W-10- Copy of Letter dated 14/07/2006 of Saroj Kumar Singh, P.No. 01333665, MRS, Dhansar addressed to Assistant Labour Commissioner (C), Shram Bhawan, Dhanbad regarding his transfer from Store Keeper.
- Exhibit W-11- Copy of Office Order No. 8536-43 dated 15/18.05.2009 issued by K.Kumar, Dy. C.P.M. (MP&R).
- Exhibit W-12- Copy of Release Letter No. Rescue/129 dated 08/06/2009 issued by PK. Choudhary, General Manager (Rescue).
- Exhibit W-13- Copy of Office Order No. 331 dated 30/09/2013 issued by Project Officer, Bera Colliery.
- Exhibit W-14- Copy of Office Order dated 24/05/2013 issued by Project Officer, Bera Colliery.
- Exhibit W-15- Copy of Office Order No. BC/PD/14/963 dated 26/09/2014 issued by Project Officer, Bera colliery.
- Exhibit W-16- Copy of Office Order No. BC/PO/15/1377 dated 03/06/2015 issued by Project Officer, Bera Colliery.
- Exhibit W-17- Copy of Office Order No. BC:PO:13:3013 dated 20/22.04.2013 issued by Project Officer, Bera Colliery.
8. The management has examined only one witness. He is MW-1, Rana Santosh Kumar.
9. The management has proved the following documents in support of its case which are marked as:-
- Exhibit M-1- Copy of Office Order No. 8536-43 dated 15/18.05.2009 issued by K.Kumar, Dy. C.P.M. (MP&R).
- Exhibit M-2- Copy of Release Letter No. Rescue/129 dated 08/06/2009 issued by P.K. Choudhary, General Manager (Rescue).
- Exhibit M-3- Copy of Office Order No. 385 dated 17/06/2009 issued by Dy. Chief Personnel Manager, Bastacolla Area.
- Exhibit M-4- Copy of Letter dated 25/06/2009 of Saroj Kumar Singh, Hindi Typist, Pers. No. 01333665 addressed to Project Officer, Bera Colliery.
- Exhibit M-5- Copy of Office Order No. 666, dated 25/26.06.2009 issued by Project Officer, Bera Colliery.
- Exhibit M-6- Copy of Letter dated 03/07/2009 of Saroj Kumar Singh, Hindi Typist, Pers. No. 01333665, Bera Colliery addressed to Dy. Chief Personnel Manager, Bastacolla Area-IX.
- Exhibit M-7 Series- Copy of Last Pay Certificate dated 07/07/2009 of Saroj Kumar Singh. (total 2 pages).
- Exhibit M-8- Copy of Cadre Scheme for Ministerial Staff, General Clerical Cadre Annexure-VIII-1.
- Exhibit M-8/1- Copy of Cadre Scheme for Ministerial Staff, Store Personnel Cadre Annexure-VIII-2.
10. The learned representative of the concerned workman has submitted that the concerned workman Sri Saroj Kumar Singh had been appointed as General Mazdoor on 22/11/1994 at Bararee colliery, who was transferred to Mines Rescue Station, BCCL, Dhansar, Dhanbad where he joined on 20/10/1997 but he was deployed to do the job of Store Keeper from 02/02/1998 vide office order no. BCCL/MRSP/PER/00/98/1147 dated 27/01/1998. He has also submitted that the workman became well versed/experienced in the job of Store Keeper because of his six years experience in store work i.e. 02/02/1998 to beginning of 2004, so he was entrusted /assigned to take charge of store of Mines Rescue Station from Sr. Store Keeper Sri Anil Kumar

Chakraborty vide office order no. Rescue/1048 dated 26/02/2004. He has further argued that the concerned workman was assigned to take over the charge of Area office store and subsequently after retirement of Sri Chakraborty, Sr. Store keeper. He was also directed to take charge of both the stores. He has further argued that subsequently the concerned workman was directed to hand over the charge of Mines Rescue Station and Area office store to Sri Amal Kr. Bhattacharjee, Sr. Store Keeper and was directed to assist Sri Amal Kumar Bhattacharjee for his work. He has further submitted that the concerned workman was transferred from Mines Rescue Station Store to Security Headquarter Koyla Bhawan but the said office order was kept in abeyance and the concerned workman was allowed to retain at Mines Rescue Station. He has also submitted that the concerned workman had worked for more than ten years in the job of Store Keeper with entire satisfaction of higher authority and unblemished record, so he requested the management for his regularization on the job of Store Keeper but management started harassing him by way of issuing transfer order. He has further submitted that the concerned workman had raised an industrial dispute before the Assistant Labour Commissioner. He has further submitted that the workman had been so much harassed that he was compelled to commit self immolation but due to intervention of the District Administration he stopped his agitational program. He has also argued that the management had not regularised the service of the concerned workman as Store Keeper and vide letter dated 15/18.05.2009 he was transferred to Bastacolla Area. He has also argued that management had not produced any documents to show that he had worked as Hindi Typist and he was deployed to do the job of Office Superintendent/Supervisory work. He has further submitted that the concerned workman is entitled for regularization as Store Keeper from 2.2.1998 in Gr. II, from 2002 in Gr. I, from 2.2.2004 as Sr. Store Keeper in special grade and Technical Supervisory grade from 02/02/2008 or as Office Superintendent from 30/09/2013 in special grade/grade-A. He has further submitted that management had deprived the concerned workman from his regularisation of his service as Store Keeper.

11. The learned lawyer of management has submitted before the Tribunal that the concerned workman was appointed as General Mazdoor Category-I at Bararee Colliery and he was transferred to office of Mines Rescue Station, Dhansar. He has also submitted that on the request of the concerned workman was selected to the post of Hindi Typist, his service was regularised in Clerical Gr. III w.e.f. 12/09/2003 and was subsequently regularised in Clerical Gr. II with notional seniority w.e.f. 05/01/2005. He has further submitted that the concerned workman was to take charge of stores of MRS temporarily till the posting of new incumbent as Store Keeper after retirement to Anil Kumar Charkaborty on 29/02/2004. He has further submitted that the post of Assistant Store Keeper is in Clerical Gr. II and as per Cadre Scheme those who are having 3 years experience as Store Issue Clerk in Gr. III are promoted through DPC to the post of Store Keeper and the post of Store Keeper is in Clerical Gr. I and is filled up through DPC. He has also submitted that at present Saroj Kumar Singh is transferred and posted as Typist (Hindi) vide office order no. 385 dated 17/06/2009 and everywhere his designation is Hindi Typist, so he is not working as Store Keeper/Assistant Store Keeper.

12. Now, the only point of determination in this reference case is whether the action of the management of Mines Rescue Station of M/s. BCCL, Dhansar in not regularizing the services of Sri Saroj Kumar Singh as Store Keeper/Assistant Store Keeper is justified and legal?

FINDINGS

13. At the outset of discussion it is required to mention here that it is an admitted fact the Sri Saroj Kumar Singh the concerned workman was initially appointed as General Mazdoor on 22/11/1994 at Bararee Colliery and thereafter he was transferred to Mines Rescue Station, Dhansar.

14. It is the case of the workman that he had worked for more than 12 years as Assistant Store Keeper or Store Keeper, so he had attained the expertise, and as such he should have been regularised in the service of Store Keeper.

However, it is the case of the management that the concerned workman on his request had been selected on the post of Hindi Typist and his service was regularised in Clerical Grade III w.e.f. 12/09/2003 and was subsequently regularised in Clerical Grade II with notional seniority w.e.f. 05/01/2005. It is further case of the management that the Personnel Store Cadre and the General Clerical Cadre have different line of promotion, so the service of the concerned workman cannot be regularised in the Store Personnel Cadre.

15. In this regard the WW-1, Saroj Kumar Singh has categorically stated that he was transferred to General Manager Office Mines Rescue Station vide office order dated 27/01/1998. He has also stated that on the retirement of Sri Anil Kumar Chakraborty, the Store Keeper on 29/02/2004, he had taken the fullfledged charge of store from him vide office order dated 26/02/2004. He has also stated that on transfer of Sri Amal Kr. Bhattacharjee, Sr. Store Keeper to Rescue Station Dhanbad, Sri Bhattacharjee had been asked to take charge from him on 08/10/2004 and accordingly he had taken charge from him on 01/12/2004. He has also stated that he had been asked to assist Sri Amal Kr. Bhattacharji in his day to day work vide office order dated 26/28.2.2005 he had been asked to assist Sri Bhattacharji, Sr. Store Keeper. He has also stated that he had been performing the work of Store Keeper at Mines Rescue Station, Dhansar up to 08/06/2009 and after retirement of Sri D.K. Ram office Superintendent he had been authorised to do the job of O.S. at Bera Colliery vide office order dated 30/09/2013.

In the cross-examination he has stated that at present he is in Clerk Grade-II Hindi Typist. He got promotion from Gr. III to Gr. II from General Mazdoor. He has also stated that he could not say that the post of Store Keeper and Hindi Typist are different cadre. He has also stated that he had not applied for the post of Store Keeper and he was kept temporarily which he handed over the same to Store Keeper Bhattacharjee.

16. On the other hand the MW-1, Rana Santosh Kumar has deposed that at present Saroj Kumar Singh, the concerned workman is designated as Hindi Typist and he had joined in Mines Rescue Station, Dhansar as General Mazdoor on 22/11/1994 on transfer from Lodna Area and on his request he was selected to the post of Hindi Typist. He has also deposed that his service was regularised in Clerical Gr. III w.e.f. 12/09/2003 and was subsequently regularised in Clerical Gr. II with notional seniority w.e.f. 05/01/2005. He has further deposed that vide office order no. 1048 dated 26/02/2004, Sri Saroj Kumar Singh, Hindi Typist was asked to take charge of MRS temporarily till a new incumbent was posted as Store Keeper as one Sri Anil Kumar Chakraborty retired. He has also deposed that the regular Store Keeper was posted in the Mines Rescue Station, Dhansar and he was never deployed to work as Store Keeper/Assist. Store Keeper. He has also stated Store Personnel Cadre is separate cadre and has different line of promotion than the General Clerical Cadre to which the workman belonged. He has also deposed that Clerical staff was not engaged in the Store Cadre duties. He has further stated that post of Assistant Store Keeper is Clerical Gr. II and filled in through DPC as per Cadre Scheme out of those who are having 3 years experience as a Store Issue Clerk in Gr. III and the post of Store Keeper is in Clerical Gr. II and is filled through DPC.

In the cross-examination he has stated that in February 2004 the workman was asked to look after the responsibility of the stores from 26/02/2004 to October 2004. He has further stated that the workman was General Mazdoor and he continued. He has stated that Bhattacharjee was Store Keeper and after his retirement the concerned workman was asked to work there but during his work in Stores he had appeared for a post of Hindi Typist and was selected which he accepted. He has also deposed that he had filed documents to show that the concerned workman was working as Hindi Typist. He has also stated that Hindi Typist Cadre and Store Keeper Cadre are different.

17. Now, after coming to the documentary evidence it appears that Exhibit W-1 is a Office Order dated 27/01/1998 by which Saroj Kumar Singh, General Mazdoor Category-I was attached with the Mines Rescue Station Store in his existing capacity, Exhibit W-2 is a Office Order dated 26/02/2004 in which it has been mentioned that Sri Anil Kumar Charkaborty is attaining the age of superannuation on 29/02/2004, Sri Saroj Kumar Singh, Hindi Typist shall take charge of stores of Mines Rescue Station temporarily till new incumbent to be posted from Headquarters, Exhibit W-3 is a Office Order dated 08/01/2004 in which Sri Amal Kr. Bhattacharjee has been directed to take over the charge of Stores Mines Rescue Station, Dhansar/Area Office from Mr. Saroj Kumar Singh, Clerk Gr. III. Exhibit W-4 is a joining report of Amal Kr. Bhattacharjee on 01/12/2004 in which Saroj Kr. Singh is directed to look after the Store of Area Office every day from 9:30 AM to 1:30 PM, Exhibit W-5 is a Office Order dated 28/29.12.2004 in which it has been mentioned that Sri Amal Kr. Bhattacharjee, Sr. Store Keeper should be the charge of both the stores of Mines Rescue Station, Dhansar and Area Office, MRS and Sri Saroj Kumar Singh, Hindi Typist has been directed to hand over the charge of both stores to Sri Bhattacharjee, Sr. Store Keeper and to assist him in day to day work, Exhibit W-6 is a Office Order dated 26/28.02.2005 in which it is mentioned that Amal Kr. Bhattacharjee, Sr. Store Keeper shall be the Incharge of stores of Mines Rescue Station, Dhansar and Sri Saroj Kr. Singh, Hindi Typist will assist Sri Bhattacharjee in day to day work, Exhibit W-7 is a letter of Dy. Chief Mining Engineer dated 25/11/2004 in which the concerned workman Saroj Kr. Singh has been cautioned to be alert at his duty in future as one out of seven batteries found damaged because of lack of his supervision, Exhibit W-8 series is 13 pages of handing over the charge of Stores Keeper of MRS, Dhansar to Sri Amal Kumar Bhattacharjee on 27/10/2004, Exhibit W-9 is a Office Order dated 23/24.07.2008 in which it has been mentioned that Sri Saroj Kr Singh, Hindi Typist, Pers. No. 01333665 was transferred from MRS, Dhansar to Security Head Quarter Koyla Nagar Township, Exhibit W-10 is a letter dated 14/07/2006 addressed to Assistant Labour Commissioner, Dhanbad regarding his transfer from Store Keeper, Exhibit W-11 is a Office Order dated 15/18.05.2009 regarding transfer of Saroj Kumar Singh, Hindi Typist from RRT Sudamdih to Bastacolla Area, Exhibit W-12 is released letter dated 08/06/2009 of Sri Saroj Kumar Singh, Hindi Typist for joining him to Bastacolla Area, Exhibit W-13 is the Office Order dated 30/09/2013 by which Saroj Kumar Singh, Hindi Typist of the Colliery was authorised to look after the job of Sri D.K. Ram, O.S. who had retired from his service on 30/09/2013, Exhibit W-14 is the Office order dated 24/05/2013 in which a committee was constituted consisting members including the concerned workman to cut electric connection/water supply of un-authorised occupied quarters at Bera Colliery, Exhibit W-15 is a Office Order dated 26/09/2014 by which Sri Saroj Kumar Singh, Hindi Typist, Bera Colliery was directed to look after the job of maintaining records of quarters of Bera Colliery in addition to his normal assignment, Exhibit W-16 is Office Order dated 03/06/2015 constituting a committee regarding unauthorised occupancy of company quarter and illegal electric connection in Bera Colliery and Exhibit W-17 is a Office Order dated 20/22.04.2013 by which Sri Saroj Kumar Singh, Hindi Typist, Bera Colliery is directed to look after the job of maintenance of register of quarter of Bera Colliery.

18. On the other hand the documents of management show that Exhibit M-1 is Office Order dated 15/18.05.2009 by which Sri Saroj Kumar Singh, Hindi Typist posted at RRT Sudamdih under General Manager MRS, Dhansar was transferred to Bastacolla Area in his existing capacity (Exhibit W-11), Exhibit M-2 is a release letter dated 08/06/2009 by which Sri Saroj Kumar Singh, Hindi Typist was released from MRS, Dhansar with immediate effect (Exhibit W-12), Exhibit M-3 is a Office Order dated 17/06/2009 by which Saroj Kumar Singh, Hindi Typist was directed to report of his duty to the Project Officer, Bera Colliery, Exhibit M-4 is a letter of Saroj Kumar Singh dated 25/06/2009 by which he had made prayer for allowing him to join in the office of Project Officer, Bera Colliery, Exhibit M-5 is a Office Order dated 25/26.06.2009 by which Sri Saroj Kumar Singh, Hindi Typist was directed to report his duty to the P.M., Bera Colliery for his further assignment, Exhibit M-6 is a letter dated 03/07/2009 of Saroj Kumar Singh, Hindi Typist to Dy. Chief Personnel Manager requesting him to allow him to mark his attendance from 09/06/2009 to 24/06/2009, Exhibit M-7 is a copy of LPC, Exhibit M-8 is Copy of Cadre Scheme for Ministerial Staff General Clerical Cadre Annexure-VIII-1 and Exhibit M-8/1 is Cadre Scheme for Ministerial Staff Store Personnel Cadre Annexure –VIII-2.

19. Now, after going through the oral and documentary evidence of both the parties it is very much clear that the concerned workman namely Saroj Kumar Singh had been appointed as General Mazdoor Category-I on 22/11/1994 and was posted at Bararee Colliery. It further appears that he was subsequently attached with the Mines Rescue Station Store in his existing capacity vide letter dated 27/01/1998 (Exhibit W-1). It also appears that in the meantime vide office order dated 26/02/2004 (Exhibit W-2) Sri Saroj Kumar, Hindi Typist was directed to take charge of the stores of Mines Rescue Station temporarily till the new incumbent, so he was made Incharge of the Mines Rescue Station, Dhansar temporarily and he was not posted permanently as store keeper. Further the office order dated 08/10/2004 (Exhibit W-3) shows that Sri Amal Kumar Bhattacharjee posted as Store Keeper Mines Rescue Station, Dhansar and he was advised to take over the charge of stores of Mines Rescue Station, Dhansar/Area Office from the Saroj Kumar Singh, Clerical Gr. III. Further the Exhibit W-4 and W-6 show that Sri Saroj Kumar Singh was directed to assist Sri Bhattacharjee in day to day work. Moreover the Exhibit W-5 shows that Saroj Kumar Singh was directed to handover the charge of both the stores to Sri Bhattacharjee and assist him. The Exhibit W-8 shows that Saroj Kumar Singh, Hindi Typist/Store Keeper had handed over the charge of Store of MRS, Dhansar to Amal Kr. Bhattacharjee on 11/10/2004.

20. Now, after above discussed documents of the workman it is quite apparent that all the time Saroj Kumar Singh has been mentioned as Hindi Typist in his designation and he has been directed to take charge temporarily or to assist the Store Keeper but there is nothing to show that he has been given permanent Incharge in the Cadre of Store Keeper.

Further the Exhibits W-9, W-11, W-12, W-13, W-14, W-15, W-16 and W-17 show that the designation of concerned workman namely Saroj Kumar Singh has always been mentioned as Hindi Typist and it has no where been mentioned as Store Keeper. Exhibit W-10 is an application to the Assistant Labour Commissioner regarding his transfer from Store to other place. Moreover the Exhibit M-4 and M-6 are letters addressed to Project Officer, Bera Colliery, in which the concerned workman Saroj Kumar Singh has mentioned his designation as Hindi Typist. Further the Exhibit M-7 which is LPC in which also the designation of Saroj Kumar Singh has been mentioned as Hindi Typist.

21. It is relevant to mention here that the Exhibit M-8/M8-1 shows that there are different cadres of General Clerical Cadre and Store Personnel Cadre. Further as per Exhibit M-8/1 there is a system for promotion from Store Issue Clerk to Assistant Store Keeper and thereafter to Store Keeper and subsequently to Senior Store Keeper.

Here in this case there is no claim of the union/applicant that the concerned workman got promotion in the cadre of Store Personnel Cadre from the post of Store Issue Clerk.

22. It will be not out of place to mention here that Exhibit W-7 is a letter dated 25/11/2004 addressed to concerned workman, Sri Saroj Kumar Singh, Hindi Typist Gr. III by Dy. Chief Mining Engineer, MRS, Dhansar cautioning him to be alert in future as one out of seven batteries was found damaged because of lack of supervision.

23. In view of above discussion, it is quite apparent that the concerned workman namely Saroj Kumar Singh has no expertise knowledge of Store Keeping as submitted by the learned counsel. Moreover the concerned workman had been in charge of Store Keeper, so he is not entitled for regularisation as Store Keeper/Assistant Store Keeper.

24. After considering all the facts and circumstances of the case the Tribunal comes to the conclusion that the action of the management of Mines Rescue Station of M/s.BCCL,Dhansar in not regularizing the services of Sri Saroj Kumar Singh as Store Keeper/Assistant Store Keeper is legal and justified.

25. Hence, the concerned workman Sri Saroj Kumar Singh is not entitled for any relief.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 9 नवम्बर, 2022

का.आ. 1162.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय** नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 17/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/27/2017-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th November, 2022

S.O. 1162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2017) of the **Central Government Industrial Tribunal-cum-Labour Court No.1, DHANBAD** as shown in the Annexure, in the industrial dispute between the Management of **B.C.C.L.** and their workmen, received by the Central Government on **10/10/2022**.

[No. L-20012/27/2017/IR (CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.**Reference: No. 17/2017**

Employer in relation to the management of C.V. Area, Basantimata Colliery of M/s. BCCL.

AND

Their workman

Present: **Shri Dinesh Kumar Singh**, Presiding Officer**Appearances:**

For Employer :- Sri S.N. Ghosh, Advocate.

For workman :- Sri D. Mukherjee, Advocate.

State : Jharkhand.

Industry:- Coal

Dated 28/09/2022

AWARD

By Order No.L-20012/27/2017- (IR(CM-1)) dated 05.09.2017, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether non-providing of employment on compassionate ground to Shri Nayan Moni Gorai, S/O Late Tapan Gorai by management of Basanti Mata Colliery of M/s. BCCL is justified? If not, what relief he is entitled to?”

2. After receipt of the reference, both the parties were noticed. The Secretary, J.C.M. Union has filed his written statement of claim on 11/10/2017 and the management of Basantimata Colliery of M/s. BCCL has filed its written statement cum rejoinder on 31/05/2019.

The concerned workman namely Nayan Moni Gorai has filed rejoinder to the written statement of the management on 20/06/2019.

3. The claim of the sponsoring union as per its written statement is as follows:-

That Late Tapan Gorai was appointed as permanent workman on 30/04/1987, who died on 19/03/2014 in Central Hospital, Dhanbad and subsequently his dependent son namely Sri Nayan Moni Gorai had applied

for dependent employment immediately after the death of his father Late Tapan Gorai before management of BCCL as per NCWA but after two years the management vide letter dated 15/19-09-2016 had directed him to rectify certain defects. Subsequently the dependent son of deceased workman submitted the reply to the aforesaid letter by rectifying the alleged defects vide letter dated 26/09/2016. After that management forwarded the details of the dependent son of deceased workman to Dy. Commissioner, Dhanbad for verification of genuineness and subsequently the Dy. Commissioner, Dhanbad vide letter dated 15/10/2016 addressed to the Project Officer, Basantimata Colliery confirmed the identity of the dependent son of the deceased workman but unfortunately the management did not provide him employment. Thereafter the sponsoring union raised an industrial dispute before A.L.C. (C), Dhanbad but on failure of Conciliation Proceeding this reference case originated.

A prayer has been made for issuance of direction to the management for providing employment to Sri Nayan Moni Gorai dependent son of deceased workman Late Tapan Gorai with retrospective effects with all arrears as per NCWA.

4. On the other hand the case of the management as per its written statement is as follows:-

That the deceased workman Late Tapan Gorai was not the son of Late Madan Gorai but he was the son of Late Madan Mohan Mandal which had been accepted by the Late Tapan Gorai before the vigilance department. The deceased workman had obtained his employment against the land of Late Madan Gorai posing himself as son of Late Madan Gorai. After that Late Tapan Gorai was charge-sheeted by the management under clause 26.1.11, 26.1.12 and 26.1.29 for committing theft, fraud, dishonesty with Companies Business or property and giving false information regarding one's particulars for the purpose of employment. The concerned workman Late Tapan Gorai had participated with the co-worker to defend his case and full opportunity was given to him to defend its case and at the end, charges levelled against Tapan Gorai was proved beyond doubt but unfortunately before any order could be passed he died. The deceased workman Tapan Gorai had obtained employment by fraud posing himself as son of Late Madan Gorai against Land Looser Scheme, but actually Tapan Gorai was son-in-law of late Madan Gorai and son of Late Madan Mohan Mandal which had been proved in the enquiry, so the question of giving compassionate appointment to his son namely Shri Nayan Moni Gorai does not arise at all. The management has not committed any illegal or arbitrary act by refusing employment to Sri Nayan Moni Gorai, son of deceased workman Late Tapan Gorai who had obtained employment by practising fraud.

A prayer has been made to pass an Award in favour of the management.

The management by way of rejoinder has mentioned that save and except which are matter of record, the management denies all other and singular allegations as averred in the written statement of the workman.

5. The sponsoring union has submitted rejoinder to the written statement of management stating therein that the statement made in Para 3, 4 and 5 of the written statement of management are false and denied, the statement made in Para 6 of the written statement of management, it is submitted that the management is legally bound to provide dependent employment as per settlement and the statement made in Para 7 of written statement of management it is reiterated that the dependent employment in Coal India Ltd. is matter of right and the same cannot be denied.

6. The sponsoring union has examined only one witness. He is WW-1 Nayan Moni Gorai.

The WW-1, Nayan Moni Gorai has stated that his father was an employee of Basantimata Colliery, BCCL. He has produced the appointment letter of his father which is marked as Exhibit W-1. He has further stated that his father died on 19/03/2014 and at that time he was in service. He has also stated that after death of his father, he had submitted application for his appointment in place of his father which was sent to Police for verification. He has proved the photo copy of verification roll which is marked as Exhibit W-2. He has also stated that management had not provided him employment without assigning any reason. He has further stated that he had made claim of employment in place of his father.

In the cross-examination he has stated that he has no knowledge whether any advertisement was issued with regard to appointment of the post on which his father was employed. He has also stated that in the appointment letter of his father it has not been mentioned that his father had been given employment under Land Looser Scheme. He has also deposed that the name of his maternal grandfather is Madan Gorai and the name of his grandfather is also Madan Gorai. He has further stated that he has been residing at Khokhra Pahadi but his permanent village is Palsia. He has denied the suggestion that Police had submitted enquiry report against his father, and his father had been not given employment in the scheme of Land Looser. He has also denied that the name of his grandfather is Madan Mohan Mandal. He has also denied the suggestion that his father had obtained employment by applying wrong practices.

7. The management has examined only one witness. He is MW-1, Nandkishor Singh.

The MW-1, Nandkishor Singh has deposed that he has full knowledge about this case and in the official ledger name of father of Tapan Gorai is mentioned as Late Madan Gorai and the permanent residence of Tapan Gorai is mentioned as Palsia, P.S-Kalubathan, Dist- Dhanbad. He has also deposed that Tapan Gorai was given employment by BCCL under Land Looser Scheme as temporary miner loader. He has further deposed that BCCL had acquired land which was in the name of Madan Gorai and Tapan Gorai was given employment in place of Madan Gorai assuming him as his son. He has further stated that Madan Gorai had submitted an application before BCCL Vigilance mentioning that Tapan Gorai was not son of Madan Gorai but was his son-in-law which was investigated by police and the police had submitted the report that Tapan Gorai was resident of Khokhra Pahadi, P.S.- Nirsa, Dist-Dhanbad and there was nothing against him. He has also stated that they have raised this matter before the ALC and it was found that Tapan Gorai was not son of Madan Gorai but he was his son-of-law, so after death of Tapan Gorai his son Nayan Moni Gorai is not entitled for employment.

In the cross-examination he has stated that he was appointed in Basantimata Colliery in June 2013 and he could not say how Madan Gorai had submitted his application showing the land in his name and now he got employment. He has also stated that this type of matter was enquired into by Estate Department and thereafter land was registered. He has also stated that he has not produced any such documents regarding registration of land before the Tribunal. He has also deposed that at the time of appointment of Tapan Gorai he was not posted at Basantimata Colliery and in the appointment letter it was not being mentioned earlier that for which land, employment was given to a person and if the said information was found wrong, his employment would be cancelled. He has further stated that Tapan Gorai was appointed against the vacant post of temporary miner loader. He has further deposed that management had not produced any documents before the Tribunal to show that Tapan Gorai was appointed under Land Looser Scheme. He has also deposed that the copy of enquiry proceeding and the statement of Tapan Gorai before vigilance have not been produced before the Tribunal. He has further deposed that the complaint application of Madan Gorai has also not been produced before the Tribunal. He has further deposed that Nayan Moni Gorai is not entitled for employment in place of his father.

8. The leaned lawyer of concerned workman has proved the following documents in support of his case which are marked as:-

Exhibit W-1- Original Copy of Appointment Letter, dated 12/03/1988 of Tapan Gorai s/o Madan Gorai, Temporary Miner/Loader, Basantimata/Dahibari Colliery issued by Agent Manager, Basantimata/Dahibari Colliery.

Exhibit W-2- Photo Copy of Verification Roll of Nayan Moni Gorai s/o Late Tapan Gorai.

9. The management has proved the following documents in support of its case which are marked as:-

Exhibit M-1- Photo Copy of Letter dated 08/08/2015 of General Manager, Chanch Victoria Area addressed to RLC(C) Dhanbad in I.D. Case No. 15/23/15.

Exhibit M-2- Photo Copy of Enquiry Proceeding dated 27/09/2013.

Exhibit M-3- Photo Copy of Letter No. BM/XII/Enquiry/13/1655 dated 12/13-09-2013 of Project Officer, Basantimata Colliery addressed to P.K. Unnikrishnan, Sr. Officer (Personnel), Basantimata Colliery regarding appointment of Enquiry Officer.

Exhibit M-4- Photo Copy of Letter No. BM/XII/Enquiry/13/1674, dated 17/09/2013 of P.K. Unnikrishnan, Sr. Officer (Personnel)/Enquiry Officer, Basantimata Colliery addressed to Tapan Gorai, Pers. No. 02092724 Pump Operator, Basantimata Colliery regarding notice of enquiry.

Exhibit M-5- Photo Copy of Letter No. BM/XII/Agent/13/1652, dated 12/13.09.2013 of Agent, Basantimata-Dahibari Colliery addressed to Tapan Gorai Pers. No. 02092724, Basantimata Colliery regarding resuming duty pending enquiry.

Exhibit M-6- Photo Copy of Chargesheet with suspension, dated 22/08/2013.

Exhibit M-7- Photo Copy of Letter No. 2983-85, dated 11/12.06.2013 of Umakant Gupta, G.M. (P) Coord. & Impl. (Pers.) addressed to General Manager, C.V. Area-BCCL regarding initiation of Disciplinary action against Sri Tapan Gorai, Pump Operator, Basantimata Colliery, C.V. Area and for tracing his employment file.

Exhibit M-8- Photo Copy of Letter No. 294, dated 22/08/2013 of Chief Manager (Pers.) C.V. Area addressed to the Project Officer, Basantimata Colliery regarding initiation Disciplinary action against Sri Tapan Gorai, Pump Operator, Basantimata Colliery and for tracing his employment file.

Exhibit M-9- Photo Copy of Appointment letter dated 11/28.11.1987 of Tapan Gorai issued by General Manager, Chanch-Victoria.

Exhibit M-10- Photo Copy of relevant portion of the voter list of Khokhra Pahadi showing the name of Tapan Kumar Mandal son of Madan Mohan Mandal.

Exhibit M-11- Photo Copy of report of Dy. Commissioner, Dhanbad vide letter no. 2920 dated 07/07/2012 regarding character and antecedent verification.

Exhibit M-12- Photo Copy of verification of genuineness of antecedents dated 21/29.03.2012.

10. The learned lawyer of the concerned workman has submitted that that Late Tapan Gorai father of Sri Nayan Moni Gorai died on 19/03/2014 while he was in service of the Company. He has also argued that Late Tapan Gorai was not appointed under Land Looser Scheme rather he was appointed against vacant post. He has also submitted that no charge-sheet was issued for appointment under Land Looser Scheme and the Enquiry Officer was appointed to conduct enquiry. He has also submitted that WW-1, Nayan Moni Gorai has fully supported his case whereas the MW-1, Nandkishor Singh has admitted that Tapan Gorai was appointed against vacancy as temporary miner loader. He has also submitted that the MW-1 had admitted that no paper concerning appointment of Tapan Gorai under Land Looser Scheme has been filed before the Tribunal. He has also argued that dependent son of Late Tapan Gorai is entitled for employment with full way wages and cost.

11. On the other hand the learned lawyer of management has submitted that Late Tapan Gorai father of the claimant was an employee of BCCL under Land Looser Scheme of the Company. He has also submitted that some land was acquired by BCCL belonging to Madan Gorai of Palasia Village, P.O. –Mugma, P.S. Nirsa, Dist. Dhanbad and Tapan Gorai (Father of the claimant) by adopting fraud measures obtained employment in BCCL establishing himself as son of Madan Gorai of Village Palasia whereas Tapan Gorai was actually the son-in-law of Madan Gorai of village Palasia and not son of Madan Gorai, so he has falsely established himself as son of Madan Gorai and got employment. He has also submitted that Tapan Gorai is actually the son of Madan Mohan Mandal of village-Khokhra Pahadi, P.S. Nirsa, Dist.-Dhanbad and after receiving complaint regarding genuineness of Tapan Gorai verification was conducted by the BCCL vide letter dated 21/29.3.2012 addressed to District Commissioner, Dhanbad and after enquiry it had been reported that Tapan Gorai @Tapan Kumar Mandal is the son of Madan Gorai @Madan Mandal of village-Khokra Pahadi, P.S.- Kalubathan (at present) Dist.- Dhanbad. He has further argued that it has been fully established that Tapan Gorai @ Tapan Kumar Mandal (now deceased) was the son of Madan Gorai @ Madan Mohan Mandal of village- Khokrapahadi and not of village- Palasia. He has further argued that there was a complaint against Tapan Gorai regarding the genuineness and Tapan Gorai had himself accepted before the Vigilance Department that he was the son-in-law of Late Madan Gorai of Palasia against whose land he had got employment as son. He has further submitted that the deceased workman namely Tapan Gorai was not the son of Madan gorai of Palasia against whose land, he had obtained employment fraudulently, so his dependent son namely Nayan Moni Gorai is not entitled for employment under the provision of NCWA.

12. Now, the only point of determination in this case is whether the action of management of Basanti Mata Colliery of M/s. BCCL the providing of employment to Shri Nayan Moni Gorai, S/O Late Tapan Gorai on compassionate ground is justified? If not, what relief he is entitled to?

FINDINGS

13. At the outset of discussion it is required to mention here that it is an admitted fact that the deceased Late Tapan Gorai was a permanent employee of Basantimata Colliery of M/s. BCCL.

14. Now, the question arises whether the Nayan Moni Gorai, dependent son of deceased workman namely Late Tapan Gorai is entitled for compassionate appointment?

In this regard the WW-1, Nayan Moni Gorai has deposed that his father died on 19/03/2014 while he was in service and thereafter he had submitted his application for his appointment on compassionate ground which was sent to Police for verification (Exhibit W-2). He has also stated that he was not provided employment by the management without assigning any reason.

On the other hand the MW-1, Nandkishor Singh has deposed that Late Tapan Gorai was given employment by BCCL under Land Looser Scheme as a son of Madan Gorai but he was son-in-law of Madan Gorai and in this regard a complaint had been filed before BCCL Vigilance which was sent to Police for investigation and Police had submitted a report that Tapan Gorai was resident of Khokhra Pahadi, P.S.- Nirsa, Dist- Dhanbad.

15. It is relevant to mention here that the management has raised the issue that Late Tapan Gorai the deceased workman had obtained the employment by practising fraud and mischief and in this regard proceeding had been started against him.

16. Now, coming to the documentary evidence of the workman it appears that Exhibit W-1 is an appointment letter of Tapan Gorai as a temporary miner/loader dated 12/03/1988 and Exhibit W-2 is the photo copy of Verification Roll of Nayan Moni Gorai.

The documentary evidence of management shows that the Exhibit M-1 is a letter dated 08/08/2015 addressed to RLC(C), Dhanbad, Exhibit M-2 is the photo copy of enquiry proceeding dated 27/09/2013, Exhibit M-3 is the photo copy of appointment of Enquiry Officer, Exhibit M-4 is the photo copy of notice of enquiry, Exhibit M-5 is a letter of Agent, Basantimata Colliery allowing Tapan Gorai to resume duties, Exhibit M-6 is a charge-sheet with suspension dated 22/08/2013, Exhibit M-7 is a initiations of disciplinary proceeding against Tapan Gorai dated 11/12.06.2013, Exhibit M-8 letter of Chief Manager to Project Officer, Basantimata Colliery for disciplinary action against Tapan Gorai, Exhibit M-9 is appointment letter to the post of temporary underground miner/loader in the Group V-A, Exhibit M-10 copy of voter list, Exhibit M-11 copy of letter dated 07/07/2012 regarding character and antecedent verification and Exhibit M-12 copy of verification of genuineness of antecedents dated 21/29.03.2012.

17. Now, after analysing the documentary evidence it is quite apparent that the Exhibit M-2 is a proceeding of enquiry dated 27/09/2013 into the charge-sheet against Tapan Gorai but the same was adjourned fixing the date on 16/10/2013, so it appears that the enquiry regarding his appointment had not been concluded. Further the Exhibit M-6 shows that a charge-sheet was issued and Tapan Gorai was placed under suspension vide order dated 22/08/2013 but the Exhibit M-5 shows that vide letter dated 12/13.09.2013 issued by Agent, Basantimata Colliery he was allowed to resume his duties pending enquiry, Exhibit M-7 and M-8 are letters for initiation of disciplinary action against Tapan Gorai and tracing of his employment file.

18. Now, it is quite apparent that there are no documentary evidence of the management which show that the deceased workman Late Tapan Gorai had obtained the employment by practicing fraud and wilful falsification of record of the company.

19. It is required to mention here that the management has not filed any documents to show that the proceeding of enquiry had been concluded and the charges against the Late Tapan Gorai had been proved.

20. It is relevant to mention here that charges against late Tapan Gorai had not been proved and he was not dismissed from service, so at the time of death he was in the pay roll of the company of BCCL under Basantimata Colliery.

21. In view of above discussion the Tribunal finds that the Late Tapan Gorai was in service at the time of his death at Basantimata Colliery, so his dependent son Nayan Moni Gorai is entitled for employment after his death.

22. I must mention here that if Sri Nayan Moni Gorai has crossed the limit of maximum age of employment then the upper age limit is directed to be relaxed for his employment.

23. After considering all the facts and circumstances of the case the Tribunal hold that non-providing of employment on compassionate ground to Shri Nayan Moni Gorai, S/O Late Tapan Gorai by management of Basanti Mata Colliery of M/s. BCCL is not justified and he is entitled for employment.

Hence, the management is directed to provide employment to Nayan Moni Gorai, dependent son of Late Tapan Gorai within one month after publication of the Award in the Official Gazette.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फेडरल बैंक लिमिटेड प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 08/2015) को प्रकाशित करती है।

[सं. एल-12025/01/2022-आई आर (बी-1)-11]

ए. के. यादव, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam* as shown in the Annexure, in the industrial dispute between the management of M/s.Federal Bank Ltd and their workmen.

[No. L-12025/01/2022—IR(B-1) -11]

A. K YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 2nd day of May 2022, 12 Vaisakha 1944)

ID No.08/2015

Workman : Shri. N. N. Reghu
Neriyamkottu House
Madhavan Master Lane
Mamangalam
Palarivattom P.O.
Ernakulam - 682025
By Adv.Jolly John K

Management : The Deputy General Manager
M/s.Federal Bank Ltd.
Registered Office
Human Resources Department
Employee Relations & Operations
Federal Towers, P.O.Box No.103
Aluva
Ernakulam –683101
By M/s.B.S.Krishnan Associates

This case coming up for final hearing on 05.10.21 and 20.12.2021 and this Industrial Tribunal-cum-Labour Court on 02.05.2022 passed the following:

AWARD

1. This is a petition filed U/s 2A(2) of the Industrial Disputes (Amendment) Act, 2010.
2. The workman was appointed as a bank man in the Management Bank on 01.04.1997. Management Bank has issued merit certificates on various occasions to the workman. He had unblemished service with the Management Bank till 19.11.2012. On 19.11.2012, the workman was issued with an order of suspension on some frivolous charges. An enquiry was conducted. The enquiry was an empty formality as the Enquiry Officer failed to comply with the principles of natural justice. The workman participated in the enquiry, filed list of witnesses and defence documents. The Management failed to examine any independent witness in the enquiry. The workman had raised a specific plea with regard to ME-8 document that the signature in the cheque was not of the workman and he requested that the same may be forwarded to Forensic Laboratory for verification of the signature. The Enquiry Officer did not consider the prayer. Contrary to the evidence on record, the Enquiry Officer submitted a report stating that the charges levelled against the workman are proved. The charges leveled against the workman and the findings arrived at by the Enquiry Officer are entirely different. The Management

accepted the findings of the Enquiry Officer and terminated him from the service of the Management. The appeal filed by the workman was also rejected by the Appellate Authority confirming the findings of the Enquiry Officer and also punishment imposed by the Disciplinary Authority. At the time of the enquiry, the Management issued orders to release Ex-gratia payment for the financial year ending 31.03.2013. The Management failed to release the said Ex-gratia payment to the workman.

3. The Management filed written statement denying the above allegations. The original claim of the workman before the Conciliation Officer was for Ex-gratia payment. The demand for reinstatement was raised subsequently which is clearly an afterthought. The workman was working as bankman at Edappally branch of the Management Bank and was suspended from service w.e.f. 23.11.2012 on getting a report that he had indulged in taking bribe or illegal gratification from customers, misappropriated excess money from a customer for obtaining PAN card, misbehaved with a customer, indulged in lending and borrowing of money from customers resulting in complaints before Police and other authorities and incurred excessive debts resulting in customer complaints. One of the allegation against the workman was that he arranged a loan to one Sri.Sabu C.P. whose proposal was declined by the Bank earlier. The workman made Smt.Suba Sabu wife of Sri.Sabu to mortgage her property as security for another loan sanctioned by the Branch to Sri.Paul Moolan in the name of M/s.Moolan Electricals & Sanitaries on 19.09.2005. As advised by the workman, Smt.Suba Sabu mortgaged the property for ODCC limit of Rs.5.00 lakhs to Mr.Paul Moolan. As per the understanding, Sri.Paul Moolan handed over Rs.1,50,000/- to Sri.Sabu by way of cash cheque. For arranging this transaction, the workman accepted Rs.10,000/- from Sri.Sabu and Rs.25,000/- from Sri.Paul Moolan. The amount of Rs.25,000/- was received by the workman by way of cash cheque issued by Sri.Paul Moolan in the name of one Sri.Roy on 20.09.2005. The cheque was written by the workman and he had signed on the reverse of the cheque acknowledging the receipt of cash. Though Sri.Sabu repaid the amount to Sri.Paul Moolan by remitting Rs.1,80,000/- into his SB account on 25.07.2008 and transferring the same to the loan account in the name of M/s.Moolan Electricals & Sanitaries, Sri.Paul Moolan failed to remit the remaining loan amount and hence the property mortgaged by wife of Sri.Sabu was implicated in the case filed by the Bank. Sri.Sabu remitted another amount of Rs.1,15,000/- to the loan account of Sri.Paul Moolan to get back the property from the Bank. The matter was settled by a compromise on 03.11.2012 and during the period of negotiation, the workman further demand of Rs.20,000/- from Sri.Sabu. It was further alleged that the workman accepted Rs.300/- from one Sri.Selvam Raj for obtaining PAN card from the Bank though the charges for taking PAN card was Rs.94/- only. Thus the workman had taken excess money and misappropriated the balance amount. The workman borrowed Rs.30,000/- from one Smt.Nagaratinam and has not repaid. She filed a complaint with the Branch Manager. Smt.Nagaratinam complained before Police and also before Kerala State Legal Services Authority. She also complained that the workman had tried to falsely incriminate her husband in a criminal case alleging atrocities against women. Workman also made Sri.Mathew N. J. proprietor of M/s. Nereveetil Auto Spares, a customer of the Bank, to pay Rs.5 lakhs to one Sri.Antony introduced by the workman. The workman assured to pay back the amount in case of nonpayment of Sri.Antony. The workman gave a signed blank cheque for security. However neither Sri.Antony nor the workman have repaid the amount. Sri.Boby T. Pappachan working as Bankman in the Management Bank complained that as requested by the workman he had lent Rs.10,000/- to Sri.Navas, a friend of the workman and that the workman had given a cheque signed by Sri.Navas as security to Sri.Boby. When Sri.Navas failed to repay the amount, he enquired the matter with Sri.Navas. Sri.Navas told him that he has already returned the money to the workman. The workman also owed money to customers of the Branch such as Sri.Sivarajan and Sri.Joshy C.C. and had misbehaved with another customer Sri.Sebastian D'Silva. The Disciplinary Authority issued a charge sheet dt.19.11.2012 to the workman alleging gross misconduct of "doing any act prejudicial to the interest of the Bank, giving or taking bribe or illegal gratification from a customer or an employee of the Bank, misbehavior towards customers arising out of Banks' business and also minor misconduct of incurring debts to an extent considered by the management as excessive" under the Bipartite Settlement. The Disciplinary Authority simultaneously ordered a domestic enquiry to enquire into the charges levelled against the workman. The domestic enquiry against the workman on the basis of the charge sheet dt.19.11.2012 was conducted strictly in accordance with the principles of natural justice and the workman was defended in the enquiry by an Advocate of his choice. The Management produced valid documents and examined witnesses to substantiate the charges. 3 witness were examined and 22 documents were marked from Management side. All Management witnesses were cross examined by the defence representative. The workman adduced both oral and documentary evidence. 6 witnesses were examined and 8 documents were marked on the side of the workman. The workman was given all the opportunity to defend his case and prove his innocence. After analyzing the evidence, oral and documentary, the Enquiry Officer returned a finding that the charges against the workman were proved. A copy of the findings of the Enquiry Officer dt.22.05.2013 was forwarded to the workman for his comments. The workman did not offer any comments to the enquiry findings. The Disciplinary Authority after considering the evidence, facts and circumstances, concurred with the findings of the Enquiry Officer, issued an order proposing punishment of dismissal without notice vide Memorandum dt.23.07.2013. The workman was also given a personal hearing with regard to the nature of proposed punishment on 05.08.2013. The workman availed the opportunity and submitted a letter dt.05.08.2013 to the

Disciplinary Authority. After considering all the documents and the submission by the workman, the Disciplinary Authority imposed the punishment of dismissal without notice on the workman vide order dt.27.09.2013. The appeal submitted by the workman before the Appellate Authority was also rejected vide order dt.30.12.2013. The workman filed W.P.(C)no.18254/2013 seeking a direction to release Ex-gratia amount declared by the Bank for the financial year 2012-13. The workman later withdrew the petition with a liberty to pursue the matter before the appropriate forum. As per Management Bank Circular no.HRAdmn/S/3220/2013 dt.30.04.2013 employees who were under suspension will get Ex-gratia amount only on getting clearance from HR Administration. Further Ex-gratia is not liable to be paid to persons who ceased to be in the service of the Bank on account of dismissal /termination during the financial year or thereafter. Hence the Ex-gratia amount to the workman was withheld by the HRA Administration. The workman was dismissed from service vide order dt.27.09.2013 and the period of his suspension from 23.11.2012 till the final order was not treated as period spend on duty. Hence he was not eligible for Ex-gratia for financial year ended 31.03.2013. The domestic enquiry conducted against the workman was impartial and was strictly in accordance with the rules and following the principles of natural justice. The Management also pleaded that if the domestic enquiry against the workman is held to be vitiated in any manner, the Management may be allowed to adduce fresh evidence to substantiate the charges levelled against the workman.

4. The workman filed a rejoinder denying the allegations in the written statement and reiterating the pleadings in the claim statement.

5. On completion of pleadings by the parties, the Enquiry Officer in the disciplinary proceedings was examined as MW1 and the enquiry file is marked as M1.

6. The issues to be decided in this industrial dispute are;

1. Whether the enquiry is conducted in a fair and proper manner following the principles of natural justice?
2. Whether the finding of the Enquiry Officer and the Disciplinary Authority are based on legal evidence ?
3. Whether the punishment awarded to the workman is proportionate to the charges proved against him?
4. Relief and cost?

7. Issue No. 1

On the request of the Counsels on either side, the issue regarding the fairness of enquiry was heard as a preliminary issue. After examining the Exbt.M1 enquiry file and the proceedings conducted by the Enquiry Officer, this Tribunal vide its order dt.14.02.2020 found that the enquiry is conducted in a fair and proper manner.

Hence the issue is decided in favour of the Management and against the workman.

8. Issue No. 2

The charges levelled against the workman are

1. that he has accepted illegal gratification from Sri.Sabu C.P. and Sri.Paul Moolan.
2. The workman accepted Rs.300/- from one Sri.Selvamraj for obtaining a Pan Card through his relative Sri.Babu.
3. Allegation made by Smt.Nagaratinam that the workman had taken a loan of Rs.30,000/- and was not returned.
4. Sri.Mathew N. J. Proprietor of M/s.Nereveettil Auto spares who is having Bank account with the Branch had lent Rs.5,00,000/- to one Sri.Antony introduced by the workman as a security of blank cheque given by the workman to Sri.Mathew N. J.
5. The complaint of Sri.Sivarajan that the workman failed to pay the cause for truss work done in the house of the workman.
6. The workman had not paid the full amount of cement purchased by him from the shop of Sri.Joshy C. C. and an amount of Rs.2000/- is outstanding.
7. The complaint of Sri.Sebastian D'Silva one of the customer of the Bank, the workman insulted and used impolite language against him when the customer visited the Branch on 13.08.2011.
8. The Management appointed an Enquiry Officer and a Presenting Officer. The workman was allowed to engage an Advocate as his defence assistant. The Enquiry Officer after conducting a

detailed enquiry found that all the charges except the charge regarding acceptance of Rs.300/- from Sri.Selvam for obtaining PAN card is proved. The Disciplinary Authority after examining the report and also the supporting evidence accepted the finding of the Enquiry Officer and awarded the punishment of dismissal without notice for charges, doing any act prejudicial to the interest of the Bank and giving or taking bribe or illegal gratification from a customer or an employee of the Bank. The Disciplinary Authority also awarded a penalty of reduction of basic pay by two stages with cumulative effect for the charge of misbehavior towards the customer arising out of Bank's business. Further he was also awarded a punishment of "censure" for the charge of incurring debts to an extent considered by the Management as excess vide its order dt.23.07.2013. The Appellate Authority concurred with the finding of the Disciplinary Authority and rejected the appeal vide order dt.27.09.2013.

9. According to the learned Counsel for the workman, the finding of the Enquiry Officer is perverse and is not based on evidence adduced in the enquiry. He elaborately took this Tribunal through the evidence adduced by the Management as well as the workman in the disciplinary enquiry and argued that the finding by the Enquiry Officer cannot be sustained on the basis of the evidence available in the enquiry file. The learned Counsel for the Management on the other side argued that the charges levelled against the workman are of very serious nature and the evidence available on record amply supports the charges and therefore the finding of the Enquiry Officer and Disciplinary Authority are sustainable on the basis of the evidence available in the enquiry file.

10. As rightly pointed out by the learned Counsel for the Management, the charges levelled against the workman are of very serious nature. The Management basically relied on the evidence of the investigation officer MW1, the Branch Manager MW2, and one Sri.Bobby T. Pappachan, bankman of Edappally MW3. Further the documentary evidence in Exbt.ME series, Exbt.M4, Exbt.ME12b, Exbt.ME15, Exbt.ME20 are relied on by the learned Counsel for the Management to argue that there is categorical evidence to show that the charges against the workman are proved. On the other side the workman relied on the evidence of Sri.Roy K. X., DW1, Sri.Sabu C. P., DW2, Sri. Nawas T. A, DW3, Sri.Sivarajan V. K., DW4, Sri.Joshy C. C., DW5, Sri.Selvam V. G., DW6 and also their statements given before the Enquiry Officer. It is to be pointed out that the defence witnesses are the complainants on the basis of whose complaint the charges against the workman were built up by the Management. It is a settled legal position that this Tribunal is not mandated to look into the evidence in detail. However it is required to examine whether the evidence produced by the Management in the enquiry would prove the charges leveled against the workman and whether the finding of the Enquiry Officer is perverse.

9. The whole investigation against the workman started with a telephonic complaint alleged to have been received by the Vigilance Department from one Sri.Vinod, Mandalam President of Congress party that the workman is involved in financial dealings with some customers and is engaged in activities which might cause loss of reputation to the Bank. The identity of the complainant is not known to anybody including MW1 who investigated the complaint. The source of the complaint becomes relevant because it is stated in evidence that the workman contested in a local election as an independent and lost the election.

10. Exbt.ME3 series is a statement given by the workman to the investigating team, directly or indirectly admitting the charges levelled against him. The workman later retracted the statement stating that it is taken under coercion and on an assurance that no further action will be taken in this matter. This is a crucial document relied on by the Enquiry Officer and Disciplinary Authority to arrive at their findings.

11. The learned Counsel for the workman pointed out that all the charges are held to be proved on the basis of the evidence of the Investigating Officer, the Branch Manager and a bankman who is also an employee of the Bank. He also pointed out that there are only two complaints and other evidence are on the basis of the report prepared by the Investigating Officer and the oral evidence given by the Branch Manager. According to the learned Counsel, none of the complainants other than the bankman was examined in the enquiry. With regard to the first charge, the case against the workman is that he accepted a bribe of Rs.10,000/- from Sri.Sabu and Rs.25,000/- from one Sri.Paul Moolan for sanctioning a loan. It is also alleged that the workman demanded a further bribe of Rs.25000/- from Sri.Sabu. Exbt.ME8 in the enquiry file is a cheque issued by Sri.Paul Moolan to one Mr.Roy. Sri.Roy was examined as DW1, as a defence witness in the enquiry. DW1 admitted his signature on the reverse side of ME8 and he also admitted the same in Exbt.DE1 statement. According to the learned Counsel for the Management, the signature on the reverse side of ME8 is that of the workman and he accepted the same as a bribe for getting a loan. In his oral evidence before the Enquiry Officer, Sri.Roy, DW1 categorically admitted that the signature on the reverse side of Exbt.ME8 is that of his. MW1 also in his evidence stated that the signature on the reverse side of ME8 is not of that of the workman

but he claimed that it could put by the workman. He also stated that if the Bank records are examined, it can be seen as who withdrew the money, but the same is not done. Hence it can be seen that the finding of the Enquiry Officer that the amount of Rs.25000/- as per ME8 is withdrawn by the workman, given as bribe to him by Sri.Paul Moolan for arranging a loan of Rs.5,00,000/- from the Management Bank is not correct. Hence it is clear that the charge that he accepted a bribe of Rs.25,000/- from Sri.Paul Moolan for arranging a loan of Rs.5,00,000/- is not proved in the enquiry and to that extend the finding of the Enquiry Officer is perverse.

12. The next charge is with regard to the allegation that the workman had accepted Rs.300/- from one Sri.Selvam Raj for obtaining Pan Card. Even according to the Enquiry Officer, the said charge is not proved in the enquiry.

13. With regard to the next charge that the workman borrowed Rs.30,000/- from one Smt.Nagaratinam and failed to return the money, it is to be seen that the evidence on record would clearly establish the fact that the money is borrowed by one Sri.Navas. The only other document is Exbt.ME12(b), a complaint filed by Smt.Nagaratinam before the Branch Manager alleging that the workman had taken Rs.30,000/- from her. However Exbt.13(b), a petition filed by Smt.Nagaratinam before the Kerala State Legal Services, would disclose the fact that the loan was taken by Sri.Navas and the name of the accused in the complaint was also Sri. Navas. Further the workman also produced exbt.DE3(a), a copy of the Criminal M.C. no.1996/2011 filed by Sri. A. Navas before the Hon'ble Sessions Court, Ernakulam and also the order dt.24.11.2011 passed by the Hon'ble Sessions Court. These documents would substantially establish the fact that Smt.Nagaratinam had filed the complaint against Sri.A. Navas and he applied for anticipatory bail in that case. Another document produced by the workman in the enquiry is Exbt.DE4 which is a blank stamp paper in which Sri.A. Navas is the one signatory and one Sri.N. N. Appu has signed as a witness. It has come in evidence that Sri.N. N. Appu is none other than the workman and his signature tallies with his signature in other documents. The Enquiry Officer for some reason disbelieved all the defence evidence and held that the charge that the workman took an amount of Rs.30,000/- as loan from Smt.Nagaratinam is proved. It is relevant to point out that Sri.Navas was examined in the enquiry as DW3 and a statement given by him was marked as DE4. Though the Management elaborately cross examined Sri.Navas, the Management failed to extract anything from Sri.Navas to prove that Rs.30,000/- was taken by the workman and not Sri.Navas. Hence the finding by the Enquiry Officer with regard to this charge is also not supported by proper evidence or the evidence available on record were not properly considered by the Enquiry Officer before arriving at his findings.

14. The next charge is that, Sri.Mathew N. J. Proprietor of M/s.Nereveettil Auto Spares lend Rs.5,00,000/- to one Sri.Antony introduced by the workman and on his assurance that he will pay back the amount in case of nonpayment by Sri.Antony. The workman also gave a signed blank cheque to Sri.Mathew as security. There is absolutely no evidence other than the statement of MW1, the Investigating Officer and Exbt.ME1 the report filed by him before the Management to support the charge. The defence side produced some documents to show that it was only a transaction between Sri.Mathew N. J. and Sri.Antony and since Sri.Antony or Mathew N. J. were not examined, those documents were not accepted by the Enquiry Officer. However in Exbt.ME3, the workman admitted that he had given a blank cheque in the name of himself and his sister as security to the transaction.

15. The next charge against the workman is that one Sri.Bobby T. Pappachan, bankman, Edappally Branch complained that as requested by the workman, he had lend Rs.10,000/- to Sri.Navas and the workman had given a cheque issued by Sri.Navas on the same day as security. The Management examined MW3 Sri.Bobby T. Pappachan to substantiate this charge. MW3 in his deposition stated that the workman requested him to lend Rs.10,000/- to Sri.Navas and Sri.Navas gave a cheque to him through the workman. Neither the workman nor Sri.Navas returned the money. The evidence available on record is the statement given by Sri.Bobby T. Pappachan, ME15 and true copy of the cheque no.122152 of the Bank dt.30.10.2010 for Rs.10,000/- issued by Sri.Navas to Sri.Bobby T. Pappachan. Sri. Navas was examined as defiance witness and he categorically stated that he knew Sri.Bobby T. Pappachan and on his request an amount of Rs.10,000/- was given by Sri.Bobby T. Pappachan and he gave his cheque as a security. In the written statement given by him, it is also stated that the matter is already settled. There is nothing on record other than the Exbt.ME3 statement given by the workman showing the involvement of the workman in the transaction. The other charges are that Sri.Sivarajan, a customer of the Bank has executed the truss work in the house of the workman and he failed to pay the balance amount of Rs.4000/- and that the workman purchased cement from one Sri.Joshy C. C and failed to pay an amount of Rs.2000/- to him. The defence examined Sri.Sivarajan as DW4 and Sri.Joshy as DW5, both of them confirmed that they received money and they don't have any complaint against the workman. They filed their written statement also to that effect in the enquiry.

16. Another charge against the workman is that he misbehaved with one Sri.Sebastian D'Silva, a customer of the Bank and insulted him using impolite language. According to the workman, this is a matter which was closed two years back and the customer has withdrawn his complaint on the same day. It has also come out in evidence that the complaint was withdrawn.

17. The nature of evidence in the enquiry to a certain extent is discussed above, only to point out that the finding of the Enquiry Officer and Disciplinary Authority has not taken into account the complete evidence and particularly the evidence on the defence side. To that extent the finding by the Enquiry Officer is perverse since such a finding is not possible in the normal circumstances by an ordinary person.

Hence it is concluded on the basis of the above discussion that the findings of the Enquiry Officer and Disciplinary Authority are not based on the complete evidence available on record and to that extent the findings are perverse.

18. **Issue No. 3 & 4**

The learned Counsel for the workman argued that the punishment of dismissal without notice imposed on the workman is too harsh and disproportionate to the charges alleged against him. The learned Counsel for the Management on the other side pointed out that an official who is dealing with public money is supposed to act with honesty and integrity. The learned Counsel relied on exbt.ME21, Memorandum of Instructions wherein the Management Bank has issued detailed instructions regarding public conduct, lending and borrowing etc., by employees of the Management Bank. According to him even if the charges of direct involvement of the workman in the financial transactions is not established, his involvement in all these charges are very well proved. As per ME21, instructions on lending and borrowing, an employee of the Bank shall not cause oneself or any member of family to be monitorily liable to an entity having dealings with the Bank or other employees of the Bank. Further as per Bank's instructions published on 04.10.2006, ME22, the employees of the Bank shall not in their individual capacity borrow or permit any member of their family to borrow from customers or people who have dealings with the Bank and also that such borrowings will be considered as an act prejudicial to the interest of the Bank. Observance of discipline in personal financial dealings by employees at all levels, is an essential pre requisite for protecting reputation and credibility of the Bank before its stockholders and public. The learned Counsel for the Management also relied on the decision of the Hon'ble Supreme Court of India in **Standard Chartered Bank Vs R. C. Srivastava**, Civil Appeal no.6092/2021 and held that the jurisdiction of the Tribunals U/s 11A of the Act, 1947 although is a wide one but it must be judicially exercised. The Hon'ble Supreme Court also held "Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinize or analyze the evidence but what is important is how it does so". In this case as already discussed, the findings by the Enquiry Officer and the Disciplinary Authority is perverse to the extent that the evidence on record produced by the workman was not properly considered by the Enquiry Officer. This is a case where the workman succeeded in producing majority of the complainants or those persons who gave statement before the Investigating Officer as defence witnesses and they gave written statement as well as oral evidence in the enquiry. Though the Management elaborately cross examined those defence witnesses, the Management failed to discredit the evidence of those witnesses. Further as already pointed out, the Management basically relied on the evidence of MW1 and MW2 and also the ME1 report of MW1 and ME3 statement given by the workman to the Investigating Officer ignoring the relevant evidences adduced by the workman.

19. Having said that, the involvement of the workman in all incidents involved in the charge sheet is apparent from the available evidence. Though there is no evidence that the workman has taken the bribe, the involvement of the workman in the loan arrangement of Sri.Sabu C. P. and Sri.Paul Moolan is very much evident in the records available in the enquiry file. Similarly in the charge involving the complaint of Smt.Nagaratinam, though the allegation that the workman has borrowed Rs.30,000/- from Nagaratinam is not established, his involvement in the transaction is very much evident. Though Sri.Sivarajan, Sri.Raghu and Sri.Sebastian D'silva gave statements withdrawing the complaints, the fact remains that some amount was outstanding to Sri.Sivarajan and Sri.Raghu and there was an incident of misbehaviour with the customer Sri.Sebastian D' Silva. The learned Counsel for the Management relying on Exbt.ME21 Memorandum of Instructions dt.01.04.2011 with regard to "public conduct and lending and borrowing by employees" argued that the Bank lost confidence in the workman. In **Regional Manager, UPSRTC Vs Hotilal and another**, 2003 SCC 605 the Hon'ble Supreme Court held that "If the charged employee holds a position of trust where the honesty and integrity are inbuilt requirement of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hand. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust worthiness is a must and unexceptional".

20. In this case it is found that the finding of the Enquiry Officer and the Disciplinary Authority are not in accordance with the evidence available and therefore perverse. However it is not possible to state the there is no evidence at all. Though the direct involvement of the workman is not established in the enquiry there is evidence to show the indirect involvement of the workman in all the charges leveled against him particularly in view of the Exbt.ME3 statement given by the workman before the Investigating Officer, MW1.

21. Taking into account all the evidence and circumstances discussed above, I am of the considered view that the punishment of dismissal from service awarded to the workman is not proportionate to the charges alleged and proved against the workman. However the learned Counsel for the Management has pointed out that the Management Bank lost confidence in the workman because of his involvement in the charges established against him. Taking into account all the circumstances, I am of the considered view that the punishment of “dismissal from service without notice” can be modified as “removal from service with superannuation benefits ie., Pension and/or Provident Fund and Gratuity as may be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment”.

22. Hence an award is passed modifying the penalty awarded to the workman by the Management to that of removal from service with superannuation benefits ie., Pension and/or Provident Fund and Gratuity as may be due otherwise under the rules and regulations prevailing at the relevant time and without disqualification from future employment.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 2nd day of May, 2022.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:- Nil

Witness for the Management:-

MW1 - Sri. Sudheesh Kumar M., dt.17.06.2019

Exhibits for the Workman:- Nil

Exhibits for the Management:-

M1 - Enquiry File

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 2 दिल्ली के पंचाट (संदर्भ संख्या 99/2011) को प्रकाशित करती है।

[सं. एल-12012/69/2011-आई आर (बी-1)]

ए. के.यादव, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court-II Delhi* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/69/2011-IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 99/2011Date of Passing Award- 08.08.2022**Between:**

Shri Raj Kumar
S/o Shri Mehar Chand,
209, Maktulpuri, Roorkee,
Haridwar.

... Workman

Versus

1. Chief General Manager,
Local Head Office, State Bank of India,
Parliament Street, New Delhi-110001.
2. Deputy General Manager,
State Bank of India,
1, New Cantt Road,
Dehradun.
3. Asstt. General Manager,
State Bank of India, Region-I,
1, New Cantt Road,
Dehradun.

... Managements

Appearances:-

Shri Vijay Kumar (A/R) : For the claimant
Shri Sajal Gupta (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Local Head Office, State Bank of India, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/69/2011 (IR(B-I) dated 12/10/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of State Bank of India, Zonal Office, Dehradun in imposing the penalty of dismissal from service without notice on Shri Raj Kumar, Assistant, State Bank of India, Dharotari Branch, vide their order dated 23/11/2004 is legal and justified? To what relief the workman is entitled to?”

This order deals with the proportionality of punishment imposed on the claimant pursuant to a domestic inquiry which he describes as illegal and unreasonably disproportionate to the charge leveled against him.

It is necessary to set out the relevant facts as per the claim statement in detail. The claimant was appointed as a clerk cum cashier in the State Bank of India. In 1992. In the year 1993 he was posted in the Branch of the Bank at dhantauri in the district of Uttarkashi (U.K). On an allegation of misappropriation by him from the accounts of the customers causing wrongful loss to the Bank a departmental proceeding was initiated and on the allegations charge was framed. Simultaneously FIR was also lodged and the Police investigation ensured. Whereas the police submitted charge sheet and the claimant was sent up for a criminal trial, the departmental proceeding went ahead with the inquiry. The claimant participated in the inquiry held in the year 2002 and the inquiry officer submitted his report holding the charge proved against the claimant. After perusing the said inquiry report the disciplinary authority served show cause notice as to why the inquiry report shall not be accepted and ultimately accepted the finding of the inquiry officer and in the year 2004 passed the order of dismissal against the claimant. Being aggrieved the industrial dispute was raised by him before the Labour

Commissioner. The conciliation since failed reference was made by the appropriate government to this tribunal for adjudication on the legality of the order of dismissal from service.

The claimant and the management filed their pleadings rebutting each other stand. On the basis of the said pleadings the following issues were framed for adjudication and it was directed that issue No.1 shall be treated as preliminary issue to decide the fairness of the inquiry.

ISSUES

1. Whether the inquiry conducted by the Bank was just fair and proper.
2. Whether delay of 6 years in filing the claim frustrates the grievance of the claimant.
3. Whether the punishment of dismissal from service without notice commensurate the misconduct of the claimant.
4. As in terms of reference.

During hearing of the preliminary issue the management as well as the claimant were called upon to adduce their evidence. On behalf of the claimant it was raised that proper opportunity for defence was not given to him nor the witnesses were called by the management to testify and thereby giving an opportunity to the claimant for cross examination. The other main objection taken by the claimant was that the alleged misconduct took place in the year 1993 and the charge was served on him 8 years thereafter on 01.02.2001. The inquiry officer in a hasty manner concluded the inquiry and submitted his report on 30.03.2002. The copy of the inquiry report was never supplied to him as contemplated under the bipartite settlement. Though, there was an allegation of manipulation of records, the originals were never placed during the inquiry giving opportunity to the claimant for verification. The then Branch Manager whose signature was allegedly forged and who was initially a delinquent alongwith the claimant was not called to testify during the domestic inquiry. The claimant had also alleged that the disciplinary authority took an arbitrary decision of dismissing him from service without serving a notice to showcause.

On behalf of the management it was argued that the inquiry was conducted in a fair manner and in accordance with the Principles of Natural Justice. Opportunity was given to the workman to defend himself. Since the allegation was based upon facts on record and since, the claimant when confronted with relevant documents of the Bank, admitted his signature there on, the management committed no illegality for not examining the witnesses. It was also argued by the management that the conduct of the claimant led to loss of confidence by the management and thus, the punishment was appropriately imposed.

Having heard the argument and considering the evidence adduced this tribunal by order dated 27.08.2019 came to hold that the domestic inquiry conducted against the workman was not proper for violation of the Principles of Natural Justice and the said inquiry stands vitiated. Thereby the tribunal ordered the management to lead evidence and prove the charge against the workman. Thus, the management examined one Davendra Kumar the Chief Manager HR as MW1 and no additional document was filed. Similarly the claimant examined himself as WW1 and no additional document was placed on record by the claimant.

During course of argument the Ld. A/R for the management pointed out on the merits of the domestic inquiry conducted and drawing attention to different documents exhibited during the inquiry argued that the domestic inquiry itself proves the charge. The charge against the claimant being of serious nature no order of reinstatement should be passed. Relying on the judgment of the Hon'ble High court of Delhi in the case of **R K Singhla vs. PNB 2002 (1994) FLR 1053** he argued that the termination of the criminal case in acquittal is no way helpful to the delinquent employee as the scope of departmental proceeding and criminal proceeding being different the tribunal cannot conclude in favour of the workman merely because he has been acquitted from the criminal trial. Reliance has also been placed by the management in case of **Depot Manager Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miya AIR 1997SC 2232**, wherein it has been held that approach and objective in the criminal proceeding and disciplinary proceeding is altogether distinct and different. In the disciplinary proceeding the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be whereas in the criminal proceeding the question is whether the offence registered are established and if established what sentence should be imposed on him.

The Ld. A/R for the claimant on the other hand argued on the legislative intention behind in corporation of section 11A of the Act and submitted that in Number of judgment the Hon'ble Supreme Court have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the tribunal has to consider if the punishment commensurates the charge. He also argued that the provisions of section 11A of the Act empower the Industrial Tribunal to interfere with the quantum of punishment in appropriate cases. Here is a case where the fairness of the inquiry considered as Issue No.1 has been answered against the management and thus, it is incumbent upon the management to adduce evidence and prove the

charge against the claimant. In the case of **Oriental Textile Finishing Mills vs. Labour Court (1971)3SCC 646** it has been held that:-

if inquiry is not held or is defective, the employer can nonetheless support his order of discharge by producing evidence before the industrial tribunal.

Thus, when the departmental inquiry fails due to some omission or deficiency the employer can support the order of dismissal by producing satisfactory evidence and proving the misconduct. Furthermore, in the case of **Divyash Pandit vs. NCCBM, (2007)15SCC787** the Hon'ble Supreme Court have held:

Once the labour court came to the finding that the inquiry was nonest, it should have give opportunity to the employer to establish the charge.

In this case by order dated 27.08.2019 it has already been held by this tribunal that the domestic inquiry against the workman was not conducted properly and not in accordance to the Rule, standing order and by following the Principles of Natural Justice and thus, stands vitiated. In view of the same it is necessary to examine if the management has succeeded in proving the charge and the claimant successfully rebutted the same.

The management has examined one of its HR Managers as MW2 who except repeating the statement given earlier during the Preliminary Issue hearing has added nothing more. In his sworn testimony he has only stated about the evidence and the documents produced during the inquiry and trustworthiness of the same. He has not produced any additional document. During cross examination to a question put by the claimant about the current status of the inquiring officer he expressed his ignorance. No explanation has been offered by the management as to why the inquiry officer was not examined who prove the charge. On the other hand the claimant testified again as WW1 and stated that the Branch Manager Nilendu Das who as a co-accused in the criminal case was not issued charge sheet for the departmental proceeding and was given promotion in the meantime. The management has not produced the inquiry officer to prove the charge and the documents on the basis of which he was proceeded have not been placed on record. He also added that the criminal case ended in his favour and he has been acquitted from the charge.

When this tribunal has already come to a finding that the inquiry conducted stands vitiated, it was open for the management to supplement the evidence and prove the charge. The opportunity so granted has not been availed by the management. The Ld. A/R for the claimant argued that when the charge is not proved and the claimant has disputed the alleged misconduct the tribunal gets the jurisdiction to interfere in the finding of the management and decide the dispute on the merits on the basis of the evidence led before it. Reliance has been placed in the case of **Orrisa Cement Limited vs. Adikan Sahu (1960)LLJ 518** decided by the Hon'ble Supreme Court to submit that the only remedy available to the claimant is his reinstatement.

On hearing the argument and on perusal of the evidence adduced by both the parties and in view of the order on preliminary issue already passed, it is found that the management has miserably failed to prove the charge against the claimant and for the earlier finding given in respect of issue No.1 it is held that the finding of the disciplinary authority against the claimant and the consequential order of dismissal passed against him are illegal and disproportionate.

The alleged misconduct as found from the evidence had taken place in the year 2001 and the claimant was dismissed from service by order dated 23.11.2004. The claimant when sworn his affidavit in the year 2020 has declared his age as 62 years. Hence, the claimant who has already attained the age of superannuation cannot be ordered for reinstatement. Hence, the proper recourse is to direct the management to treat him as if on duty from the date when he was placed under suspension and till the date of superannuation. For the period from the date of suspension and the dismissal of service he shall be entitled to subsistence allowance as permissible under the Rule of the Bank and from the date of dismissal and till the date of superannuation he shall be paid 50% of the salary as during this period the claimant has not discharged any duty. During this period the other service benefits available to the claimant including annual increment shall be allowed to him. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant and it is held that the order of dismissal dated 23.11.2004 is illegal and unjustified. The claimant is held entitled to the following. The management is directed to treat him as if on duty from the date when he was placed under suspension and till the date of superannuation. For the period from the date of suspension and the dismissal of service he shall be entitled to subsistence allowance as permissible under the Rule of the Bank and from the date of dismissal and till the date of superannuation he shall be paid 50% of the salary he is entitled to as during this period the claimant has not discharged any duty. During this period, the other service benefits available to the claimant including annual increment shall be allowed to him. The management is further directed to settle the dues of the claimant as indicated above within 3 months from the date of publication of the award without interest failing which the amount shall carry interest @9% per annum from the date of accrual and till the payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

08th August, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह— श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 55/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/85/2008-आई.आर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2008) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 18/10/2022.

[No. L-20012/85/2008 – IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 55/2008

Employer in relation to the management of Katras Area of M/S BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Employer :- None

For Workman :- Shri Sadhu Sharan Prasad, Rep.

State : Jharkhand

Industry:- Coal

Dated : 30/09 /2022

AWARD

By Order No.L-20012/85/2008-IR(CM-I) dated 04.11.2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“ i) Whether the action of the Salanpur Colliery of Katras Area of M/S BCCL In denying to refer Shri Dineshwar Nonia, Pump Operator to Apex Medical Board for assessment of his disability is justified and legal ? ii)To What relief is the concerned workman entitled?”

2. The reference is received on 17/11/2008 by this Tribunal in which the Secretary, Jharkhand Janta Mazdoor Sangh, had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed. Management failed to appear before the Tribunal but union representative appeared and during the pendency of the case, the Representative of Union Sri Sadhu Sharan Prasad appeared on 07/03/2022 and subsequently on 02.06.22 and filed a petition stating that the concerned workman and his family member were not interested to contest the case, so no dispute award may be passed. Hence "No Claim" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ.1166—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नयोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 54/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/69/99-आई.आर (सी -I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2002) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 18/10/2022.

[No. L-20012/69/99 – IR (C-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 54/2002

Employer in relation to the management of Madhuban Coal Washery of M/S BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Employer :- Sri D. K.Verma Adv.

For Workma :- None

State : Jharkhand

Industry:- Coal

Dated 29/09 /2022

AWARD

By Order No.L-20012/69/99-IR(C-I) dated 10.05.2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“क्या बिहार कोलियरी कामगार यूनियन को भाको .. को. लि. के मधुबन कोल वाशरी के प्रबंधतंत्र से मांग कि श्री बी० पी० साह एवं सूची में दिए गए अन्य में नियमित किया जाए तथा. लि .को .को .कर्मकारों को भा 21NCWA के

प्रावधानानुसार वेतन का भुगतान किया जाए उचित एवं न्यायसंगत है ? यदि हां, तो कर्मकार किस राहत के पात्र है, तथा किस तारीख से ? ”

List of workmen

1	B.P. Sah	Late Tatar Sah	Vill-Bara Pandeydih., P.O.-Nawagarh, Dist.-Dhanbad	Fitter
2	Sita Ram Mahato	Sri khemah Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Fitter/Helper
3	Hari Mahato	Sri Dhanu Mahato	Vill-Taranari, P.O.-Taranari, Dist.-Bokaro	W/Helper
4	Kailash Mahato	Sri Bhim Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	W/Helper
5	Vijay Kumar	Sri Piyari Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Welder
6	Budhan Mahato	Sri Ayodhya Mahato	Vill-Paplo, P.O.-Taranari, Dist.-Bokaro	Majdoor
7	Sarju Mahato	Sri Jagu Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Helper
8	Ganesh Pandey	Sri Ayodhya Pandey	Vill-Taranari, P.O.-Taranari Dist.-Bokaro	Helper
9	Ganga Prasad Mahato	Sri Arjun Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Helper
10	Mahru Thakur	Sri Moti Thakur	Vill-Taranari, P.O.-Taranari Dist.-Bokaro	Helper
11	Mohan Mahato	Sri Ledo Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Helper
12	Bhola Mahato	Sri janki Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Helper
13	Anil Kumar Kusbaha	Sri Hublal Mahato	Vill-Taranari, P.O.-Taranari Dist.-Bokaro	Carpenter
14	Jhari Singh	Sri Sukar Singh	Vill.-Parsiya, P.O.Amnari Dist.-Giridih	Helper
15	Ram Bilash Mahato	Sri Keshu mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Majdoor
16	Lakhan pandit	Sri Dularchand Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Majdoor
17	Ganesh Mahato	Sri Nanhu Mahato	Vill-Paplo, P.O.-Taranari Dist.-Bokaro	Helper
18	Govind Mahato	Sri Ram Mahato	Vill-Telo, P.O.-Telo, Dist.-Bokaro	Majdoor
19	Bhukhal Mahato	Sri Sewa Mahato	Vill-Gotend Prbhed, P.O.- Gotend Prbhed., Dist.-Hazaribagh	Majdoor
20	Mathur Mahato	Sri Nanhu Mahato	Vill-Paplo, P.O.-Taranari Dist.-Bokaro	Majdoor
21	Lakhan kr. Pandey	Sri Dharendra Nath Pandey	Vill-Khanudih, P.O.-Khanudih Dist.-Dhanbad	Fitter
22	Brahmdeo Pandey	Sri Ramdeo Pandey	Vill-Khanudih, P.O.-Khanudih Dist.-Dhanbad	Helper

2. The reference is received on 04.06.2002 by this Tribunal in which the Secretary BCKU, had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed, and both the parties appeared for certain dates. Thereafter Regd. notice was sent to both side Further the management has appeared regularly but the union has failed to appear before the Tribunal Now the case is pending since 31.12.2001 and workman/Union is not appearing before the Tribunal, so it is felt that workman/union has lost its interest in this matter, Hence “ No Claim “ Award is passed communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 41/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/76/2008-आई.आर (सीएम-1)]

राजेन्द्र सिंह, अवर सिंह

New Delhi, the 10th November, 2022

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2008) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 18/10/2022.

[No. L-20012/76/2008 – IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD****In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947****Reference: No. 41/2008****Employer in relation to the management of Bastacolla Area of M/S BCCL****AND****Their workman****Present:** Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For Employer :- None

For Workman :- None

State : Jharkhand

Industry:- Coal

Dated 29/09 /2022

AWARD

By Order No.L-20012/76/2008-IR(CM-I) dated 19.09.2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

i)Whether the action of the managment of Kuya Colliery of M/s BCCL in not regularising Shri Mritunjay Kumar Singh as Attendance Clerk is justified and legal? ii) To what relief is the concerned workman entitled?"

2. The reference is received on 01.10.2008 by this Tribunal in which the Org. Secretary RCMS, had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed. But neither Union/workman nor the management appeared before the Tribunal Thereafter notice of the Union /workman returned unserved. Now the case is pending since 01.10.2008 and workman/Union is did not appearing before the Tribunal , so it is felt that workman/union has lost its interest in this matter, Hence “ No Claim “ Award is passed communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1168.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह-श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 05/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/77/2006-आई.आर (सीएम-1)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2007) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 18/10/2022.

[No. L-20012/77/2006 – IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 05/2007

Employer in relation to the management of Lodna Area Of M/S BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For Employer :- None

For Workman :- None

State : Jharkhand

Industry:- Coal

Dated 29/09 /2022

AWARD

By Order No.L-20012/77/2006-IR(CM-I) dated 02/4.02.2007 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of management of Joyrampur Colliery under Lodna Area of M/s BCCL in superannuating Shri Babban Saw, H/C S. Supplier form service w.e.f. 31.07.2005 is justified & legal ? If not , to what relief is the concerned workman entitled?”

2. The reference is received on 21/02/2007 by this Tribunal in which the vice President, Rastriya Colliery Mazdoor Congress, had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed and notice of union is returned with postal remarks that “receiver is died” as such both parties failed to appear before the Tribunal but during the pendency of the case, the one Representative of Union Sri K.D.P.Yadav appeared on 04/03/2022 and informed that the concerned workman is dead, so no dispute award may be passed . Hence “No Claim” Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1169.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह— श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 243/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/387/2001-आई.आर (सी -I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.243/2001) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 18/10/2022.

[No. L-20012/387/2001 – IR (C-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD****In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947****Reference: No. 243/2001**

Employer in relation to the management of Block II Area of M/S BCCL

AND**Their workman****Present:** Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For Employer :- None

For Workman :- None

State : Jharkhand

Industry:- Coal

Dated 30/09 /2022

AWARD

By Order No.L-20012/387/2001-IR(C-I) dated 07.11.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of BCCL , Block II Area in confirming suspension period from 16.11.1999 to 28.11.1999 into punishment in case of Shri Bishu Rewani and Shri Sheonandan Rai without conducting Domestic inquiry is legal and justified. If not , to what relief are the concerned workman entitled?”

2. The reference is received on 27/11/2001 by this Tribunal in which the Secretary RCMS, had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed. But neither Union/workman nor the management appeared before the Tribunal Thereafter notice of the Union /workman returned unserved. Now the case is pending since 27.11.2001 and workman/Union is did not appearing before the Tribunal , so it is felt that workman/union has lost its interest in this matter, Hence “ No Claim “ Award is passed communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1170.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 196/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2022 को प्राप्त हुआ था।

[सं. एल-20012/263/2001-आई.आर (सी-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.196/2001) of the Central Government Industrial Tribunal-cum-Labour No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 18/10/2022.

[No. L-20012/263/2001 – IR (C-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 196/2001

Employer in relation to the management of P.B.Area of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For Employer :- None

For Workman :- None

State : Jharkhand.

Industry:- Coal

Dated 29/09 /2022

AWARD

By Order No.L-20012/263/2001-IR(C-1) dated 13.09.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the union for regularization for Smt. Rajmuni Kamin as office peon is proper and justified ? If so to what relief is the concerned workman entitled an from what date ?”

2. The reference is received on 05/10/2001 by this Tribunal in which the Secretary, R.C.M.S, Dhanbad had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, Management appeared for certain dates. Further during the pendency of the case, Sri Jai Prakash Singh General Clerk (Legal Department) appeared on 31/12/2021 and filed a petition along with documents stating therein that she has already been regularized in the post of head peon and she has superannuated by this post on 31.01.2016. He has informed vide letter No. PBA/Pers/IR/2021/223, dated 26/11/2021, and prayed for No Dispute Award, which was allowed. Hence “No Claim” Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 नवम्बर, 2022

का.आ. 1171.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फेडरल बैंक लिमिटेड प्रबंधात्मक के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 28/2014) को प्रकाशित करती है।

[सं. एल-12011/25/2014-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 10th November, 2022

S.O. 1171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.28/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of M/s.Federal Bank Ltd. and their workmen.

[No. L-12011/25/2014- IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM****Present:** Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer(Friday the 29th day of April 2022, 9 Vaisakha 1944)**ID No. 28/2014**

Workman/Union : The General Secretary
Federal Bank Employees' Union
Central Office, Aluva
Ernakulam –
By Adv.C. Anil Kumar

Management : The Chairman
M/s. Federak Bank Ltd
Head Office, Aluva
Ernakulam -
By M/s.B. S. Krishnan Associates

This case coming up for final hearing on 13.04.2021 and 17.12.2021 and this Industrial Tribunal-cum-Labour Court on 29.04.2022 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/25/2014-IR(B-I) dated 13.05.2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“1. Whether the issue raised by Federal Bank Employees Union in the matter of alleged illegal deduction from pensionary benefits payable to Shri.T. Shanmughavelu even after his superannuation constitute as an industrial dispute within the meaning of Sec 2(k) of ID Act, 1947 ?

2. If so, whether the action of the Management in recovering a sum of Rs.98,503/- from the pensionary benefits of Sri. T. Shanmughavelu is justified ?”

3. The union filed claim statement for and on behalf of Sri.Shanmughavelu a member of the Union. The workman retired on 28.02.2009 at the age of superannuation. The workman was dismissed from the service of the Bank and was reinstated consequent to an award passed by the CGIT-LC, Chennai in I.D.no.749/2001. At the time of dismissal, some staff loans availed by the workman was outstanding and the Management unilaterally appropriated the Gratuity and Provident Fund payable to him, towards the outstanding loan and the balance amount was credited to the workman. The workman was reinstated as per the order of CGIT-cum-

Labour Court, Chennai. While reinstating him, the Management demanded the payment of a sum of Rs.3,70,665/- towards terminal benefits disbursed and appropriated by the Management while dismissing him from service. The Management adjusted an amount of Rs.1,75,583/- from the gratuity amount towards closing of staff loan account. The workman could not pay the amount as he was out of employment for 4 years. The Management reckoned his service only from the date of reinstatement for the purpose of computation of his terminal benefits. On superannuation, the workman was eligible for maximum gratuity of Rs.3,50,000/- but only Rs.37,462/- was paid after adjusting an amount of Rs.1,36,955/- towards interest on gratuity amount appropriated towards staff loan account. The workman moved the Controlling Authority under Payment of Gratuity Act. The application was allowed by the Controlling Authority vide its order dt.31.01.2011. During the pendency of the proceedings before the Controlling Authority a further amount Rs.48,700/- was paid by the Management. The Controlling Authority by its order directed the Management to pay a further sum of Rs.35,296/-. Aggrieved by the order of the Controlling Authority, the workman approached the Appellate Authority under Payment of Gratuity Act. The Appellate Authority vide order dt.26.12.2011 allowed the gratuity claim of the workman in full. The interest for the delayed period was also granted by the Appellate Authority. While disposing of the appeal, the Appellate Authority held that adjusting and charging interest on gratuity claimed to have been made does not arise. In the meantime the workman retired from the Management and the claim for pensionary benefit was pending. The workman repaid the Management share of provident fund contribution disbursed and appropriated by the Management Bank towards the staff loan. When the pension was disbursed by the Management, they deducted a sum of Rs.98,503/- from the arrears of pension and commuted value of pension due to the workman. This amount is claimed to be deducted towards the interest payable on the gratuity amount of Rs.1,75,583/- adjusted towards the loan account of the workman, consequent to the dismissal in 2000 to the date of his retirement. The Management has no right to claim interest on gratuity concluded by an interparty order passed by the Appellate Authority under Payment of Gratuity Act. Before the Conciliation Officer the claim of the Management was that as per Clause 49, Chapter 9 of the Pension Rules of the Management, the Bank dues can be recovered from the pensionary benefits. The Management Bank has not issued any notice to the workman showing that such an amount is due. A perusal of Pension Rules, 1995 would clearly show that the present recovery made by the Management is beyond the scope of recoveries under Clause 49 of the Pension Rules of the Management. The workman is coming under the definition of workman U/s 2(s) of the ID Act and therefore the present industrial dispute is an industrial dispute coming U/s 2(k) of the ID Act. Pension Rules, 1995 formulated by the Management Bank was in terms of a settlement signed by the Indian Banks Association and the Unions. The pensionary benefits would form part of the service conditions of the workman. Therefore the violation/non compliance of the Pension Scheme can be a subject matter of an industrial dispute.

4. The Management filed written statement denying the above allegations. The reference and adjudication thereon are not maintainable and sustainable in law and on facts. The workman retired on superannuation from the service of the Management Bank on 28.02.2009. Therefore he is not a workman as defined U/s 2(s) of the ID Act. The recovery of Rs.98,503/- from the pension benefit of the workman under rule 49 of the Federal Bank Employees Pension Rules, 1995 is not connected with the employment or non-employment or the terms of employment or the conditions of the labour. Hence the above dispute is not an industrial dispute U/s 2(k) of the ID Act. The workman was dismissed from the service of the Management Bank and was reinstated as per the decision of the CGIT-cum-Labour Court, Chennai vide order dt.04.09.2003. When reinstated in service dt.01.01.2004, the Management was compelled to initiate disciplinary proceedings in 2007 against the workman. He was imposed with punishment of reduction of basic pay by one stage in the scale of pay in the disciplinary proceedings. When the workman was dismissed from the service of the Management Bank on 11.05.2000, the Management paid an amount of Rs.1,75,583/- towards gratuity and Rs.1,95,082/- on account of provident fund. On his reinstatement on 01.01.2004, the Management directed the workman to refund the amount received by him failing which his period of service for calculation of gratuity and provident fund will be reckoned as 01.01.2004. The workman requested the Management to appropriate the amount released to him from his terminal benefits. The workman retired from the service on 28.09.2009 on attaining the age of superannuation. The total amount payable as per gratuity was Rs.3,50,000/-. Since the Bank has already paid an amount of Rs.1,75,583/- on 28.06.2000, his gratuity was settled after adjusting the amount repaid and the interest on gratuity thus paid. The workman took up the issue before the Controlling Authority under Payment of Gratuity Act. The Appellate Authority passed an order allowing the appeal of the workman holding that the interest on the amount paid towards gratuity in the year 2000 could not be recovered from the gratuity. The Management Bank has right to claim interest for the amount already paid to the workman towards gratuity amount. It was on the basis of the request of the workman that the amount paid towards gratuity in 2000 was permitted to be adjusted against the amount of gratuity that will become payable at the time of his retirement in 2009. Therefore the workman had enjoyed the fruits of this amount from 01.01.2004 to 28.02.2009. Going by the yield of gratuity from 01.01.2004-28.02.2009 an amount of interest of Rs.98,503/- was calculated. Since the workman failed to pay the money the same was adjusted from his pension benefits. The workman filed an appeal for exercising second option for pension in terms of industry wise settlement dt.27.04.2010. By virtue of exercising the 2nd option for pension, he has become a pensioner

as defined under Federal Bank Employees Pension Rule. Clause 49, Chapter IX of the Pension Rules, 1995 authorized the Bank to recover the dues to the Bank from the computed value of pension or pension or family pension. The above provision authorized the Bank to recover the interest amount from the proceeds of pensionary benefits under the head 'other recoveries' of the Pension Rules.

5. Union filed a rejoinder denying the claim of the Management in the written statement and reiterating its stand in the claim petition. The workman even after his retirement is a workman U/s 2(s) of the ID Act since the dispute is pertaining to his employment, non employment or conditions for service and as recovery from pension was consequent to a claim made by the Management Bank while the workman was in their service.

6. After completion of the pleadings the documents produced by either of the parties are marked by consent. The documents filed by the Union are marked as Exbts.W1 and W2. The documents produced by the Management are marked as Exbts.M1 to M26.

7. The following issues are framed for final decision

1. Whether the issue raised by the Union regarding the illegal recovery from the pensionary benefits payable to Sri. T. Shanmughavelu even after his superannuation constituted an industrial dispute within the meaning of Sec 2(k) of the Industrial Disputes Act ?
2. Whether the action of the Management in recovery of an amount of Rs.98,503/- from the pensionary benefits of Sri. T. Shanmughavelu is justified ?

8. Issue No. 1

As per order of reference, one of the issues referred for adjudication is whether the claim of illegal deduction from pensionary benefits of the workman after superannuation constituted an industrial dispute within the meaning of Sec 2(k) of the Industrial Disputes Act, 1947. The learned Counsel for the Management also wanted the issue to be decided as a preliminary issue.

9. There is no serious dispute regarding the facts of the case. According to the learned Counsel for the Management, the workman retired from the service of the Bank on superannuation on 28.02.2009 and therefore he is not a workman as defined in U/s 2(s) of the ID Act. Further he also argued that the recovery of an amount of Rs.98,503/- from the pensionary benefit of the workman under Rule 49 of the Federal Bank Employees Pension Rules, 1995 is not connected with the employment or non employment or the terms of employment or the conditions of labour of the workman. According to him the dispute is not an industrial dispute U/s 2(k) of the ID Act. The learned Counsel for the Union submitted that the Union is competent to raise a dispute on behalf of the member in connection with his employment or non employment and conditions of service while he was serving the Management Bank. The workman will come within the definition of Sec 2(s) of the Industrial Disputes Act, even though he retired from the service of the Management Bank at the time of raising the dispute, since the dispute is pertaining to his employment, non employment or conditions of service as recovery from the pension was consequent to the claim made by the Management while the workman in their service. According to the learned Counsel the present dispute comes U/s 2(k) of the ID Act.

As per Sec 2(k);

Industrial dispute means any dispute or any difference between employers and employees or between employer and workman or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of labour, of any person.

As per Sec 2(s)

“Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

- (i)
- (ii) ...
- (iii) ...
- (iv) ...”

The definition of workman in Sec 2(s) falls in 3 parts. The 1st part of definition given the statutory meaning of workman. The second part is designed to include something more in what the term primarily

denotes. The 3rd part specifically excludes the categories of persons specified in clause 1-4 of the subsection.

The learned Counsel for the Union relied on the decision of the Hon'ble Supreme Court of India in **Workmen of Dimakuchi Tea Estate Vs The Management of Dimakuchi Tea**, AIR 1958 SC 353 to argue that any person appearing in the definition of industrial dispute U/s 2(k) will also cover a workman retired on superannuation. It is not clear how the above decision will support the claim of the learned Counsel for the Union. In the above judgment the Hon'ble Supreme Court considered the implication of the words 'of any person' appearing in the definition of industrial dispute U/s 2(k) of the ID Act. The Hon'ble Supreme Court after elaborately discussing the earlier decisions on the issue held that

Para 33. To summarise. Having regard to the scheme and objects of the Act, and its other provisions, the expression 'any person' in Sec 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workman raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking, a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workman as a class have a direct or substantial interest".

In **William Goodacre and sons India Ltd Vs M. Goivndan and another**, O.P. no.878/1978 the Hon'ble High Court of Kerala considered whether a claim petition U/s 33C(2) can be filed for pensionary benefits by a retired employee. The Hon'ble High Court held that the right to receive pension is a contingent right which comes into full vigour as a vested right only upon retirement. It is a right which is enforceable upon the termination of the contract of service. Disputes concerning pension by their very nature generally arise subsequent to the expiry of the period of contract. A claim for pension is based on and arises from a right which was contingent until the employee retired from service. But a dispute arises upon a breach of that right after it becomes vested upon the employee's retirement. The learned Counsel for the Management relied on the decision of the Hon'ble High Court of Kerala in **Purandaran Vs Hindustan Lever Ltd**, 2001 2 LLJ 52. The facts of the case involve forceful termination of employment by the Management and therefore it was held that the claimant will come within the definition of the workman. The Hon'ble High Court held that in order that a person can be a workman under the deeming provision, he has to be one dismissed, discharged or retrenched. Dismissal, discharge and retrenchment are all voluntary acts on the part of the Management, whereas the case of resignation or voluntary retirement is an act of violation on the part of the workman. The absence of the terms 'resignation' and 'retirement' in the aforesaid definition, according to me, is very conspicuous. When a person claim the status of a 'workman' under the deeming provision, he has to establish that he comes within the four corners of the definition provided under the statute. The learned Counsel for the Management also relied in **Standard Chartered Grindlays Bank Vs UOI**, 2007 2 LLJ 887. The Hon'ble High Court of Calcutta considered whether the retired employees of the Bank would answer the definition of workman U/s 2(s) of the Act. In the above case, on the basis of the settlement entered into on 20.11.1997, between the Bank and Union of employees, the pension of all retired employees was enhanced on adhoc basis. A further settlement is entered on 10.03.1999 whereby the quantum of pension is again raised w.e.f. 01.04.1999. When the Association of retired employees raised a claim with regard to the revision of pension, the same was objected to by the Management. After examining the definition of the Industrial Disputes Act U/s 2(k) and workman U/s 2(s) the Hon'ble High Court held that

" It appears from the above provisions that a retired employee cannot be included in the definition of workman for the purpose of Industrial Disputes Act, 1947. Further, coming back to the provision of Sub Sec k of Sec 2 of the ID Act, 1947, in my opinion, the industrial dispute means and includes any dispute or difference between the employees and workmen. As such the workmen are entitled to be parties of a Bipartite Settlement in between the employers and workmen under the ID Act, 1947 and it is also open to them to take up an issue of any person including the retired workmen. Because the payment of pension has a direct bearing on substantial interest of the workman who will enjoy such pension after retirement but no retired workmen can be party to any dispute or difference with their erstwhile employers.".

The learned Counsel for the Union pointed out that the present dispute regarding recovery of interest from the terminal benefits of the workman is on the basis of a settlement and the Pension Rules, 1995 formulated by the Management Bank was in terms of a settlement signed by the Indian Bank Association and the Unions representing the workmen in the banking industry. Thus the pensionary benefits would form part

of the service conditions of the workmen and therefore the violation of the provisions of the Pension Scheme can be a subject matter of industrial dispute.

10. As already pointed out the various decisions of High Courts and Supreme Court has taken a consistent view that retired persons will not come within the definition of workman as per Sec 2(s) of the Act and therefore a claim with regard to pensionary benefits cannot come under the purview of Sec 2(k) of the ID Act.

Hence the preliminary issue as per the order of reference is decided against the Union and in favour of the Management.

11. Issue No. 2

It is already found that a retired employee will not come within the definition of workman U/s 2(s) of the ID Act, and as such an ID U/s 2(k) is not maintainable. In such circumstances this Tribunal has no jurisdiction to entertain the dispute involved in this reference. Hence Sri.T. Shanmughavelu is not entitled to the relief claimed as per the claim statement. The issue is answered accordingly.

12. Hence an award is passed holding that this Tribunal has no jurisdiction to adjudicate the matter for the reason that the workman involved is not a workman U/s 2(s) of the Act and therefore the industrial dispute will not come within the definition of Sec 2(k) of the ID Act, 1947. Sri.T. Shanmugavelu is therefore not entitled for the relief claimed in the industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 29th day of April, 2022.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:- Nil

Witness for the Management:- Nil

Exhibits for the Workman:-

- W1 - True copy of the Pension Rules of the Management Bank
- W2 - True copy of the order passed by the Controlling Authority under Payment of Gratuity Act, Ernakulam in G.A.No.39(8)2011-B.1

Exhibits for the Management:-

- M1 - True copy of the order dt.29.12.2011 of the Appellate Authority under Payment of Gratuity Act, 1972
- M2 - True copy of the Federal Bulletin No.50 A Part IV
- M3 - True copy of the written comments dt.12.11.2013 submitted by the Management before the Conciliation Officer
- M4 - True copy of the order dt.31.01.2011 of the Controlling Authority under Payment of Gratuity Act
- M5 - True copy of the charge sheet dt.29.09.1999 issued by the Management
- M6 - True copy of the order dt.21.02.2000 passed by the Disciplinary Authority of the Management
- M7 - True copy of the award dt.04.09.2003 passed by the Hon'ble CGIT-cum-Labour Court, Chennai in ID no.749/2001
- M8 - True copy of the letter of workman dt.10.01.2004
- M9 - True copy of the letter dt.03.01.2004 issued by the Staff Admn Department of the Management

M10	-	True copy of the letter of workman dt.22.09.2004
M11	-	True copy of the letter of workman dt.25.07.2009
M12	-	True copy of the letter dt.23.06.2009 issued by the Staff Admn Department of the Management
M13	-	True copy of the letter of workman dt.28.02.2009
M14	-	True copy of the letter of workman dt.21.03.2009
M15	-	True copy of the letter dt.17.09.2004 issued by the Staff Admn Department of the Management
M16	-	True copy of the final order dt.19.09.2008 passed by the Disciplinary Authority
M17	-	True copy of the final order dt.08.05.2000 passed by the Disciplinary Authority
M18	-	True copy of the judgment of the Hon'ble High Court of Madras dt.25.06.2012 in W.A. No.1180/2012
M19	-	True copy of the letter dt.17.12.2011 issued by the Management
M20	-	True copy of the letter of workman dt.30.12.2011
M21	-	True copy of the letter dt.23.03.2012 issued by the Management
M22	-	True copy of the letter dt.27.03.2012 issued by the Management
M23	-	True copy of the letter dt.23.03.2012 issued by the Management and acknowledged by the workman
M24	-	True copy of the letter dt.03.04.2012 issued by the Management
M25	-	True copy of the order of the Hon'ble High Court of Madras dt.08.09.2011 in W.P. No.9243/2004
M26	-	True copy of the letter dt.24.09.2012 issued by the Management .

नई दिल्ली, 11 नवम्बर, 2022

का.आ. 1172.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार छत्तीसगढ़ राज्य ग्रामीण बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 347/1999) को प्रकाशित करती है।

[सं. एल-12012/299/99-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 11th November, 2022

S.O. 1172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 347/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Chhattisgarh Rajya Gramin Bank and their workmen.

[No. L-12012/299/99- IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/347/1999

Present: P.K. Srivastava, H.J.S. (Retd)

Shri Ramswaroop Jaiswal,
 Ex-Worker of Bilaspur-
 Raipur Ksh.Gr.Bank, Village Gorakhpur (Saganga)
 Tehsil Mungeli, Po. Fatehpur, Bilaspur (C.G.)

... Workman

Versus

The Chairman,
 Chhattisgarh Rajya Gramin Bank,
 Bilaspur (C.G.)

... Management

AWARD

(Passed on 16-6-2022)

As per letter dated 22/24-11-1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.12012/299/99/IR(B-1). The dispute under reference relates to:

“Whether the action of the management of Bilaspur-Raipur Kshetriaya Gramin Bank, Bilaspur in engaging Shri Ram Swaroop Jaiswal for a decade from 1989 to 1999 although intermittently and thereafter dis-engaging him is just and legal. If not, whether the demand of the disputant for reinstatement with full back-wages at par with regular employee is just?” .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense
2. The case of the workman as stated in his statement of claim is that the workman was first appointed with the Management on 1-2-1989 as a Messenger who was posted in the Sethganga Branch of the Management Bank. He continued in service till 6-3-1999. He has worked for 240 days and more in every year till the year preceding the date of his termination in continuous engagement of the Management. His services were terminated by an oral order of the management on 7-3-1999 without giving him any notice or compensation, hence his termination is against Section 25G and 25F of the Industrial Disputes Act, 1947, herein after referred to as the word Act) and Rule 76 of the Industrial Dispute(Central) Rules, 1957. Accordingly he has stated that setting aside his termination, he be reinstated with all back Wages and benefits.
3. The case of Management is mainly that the Ministry of Finance, Union of India vide its circular No.F-2/27/80 RRB dated 28-5-1981 has prohibited Rural Banks from appointing any regular Messenger/Sweeper etc. The Banks were permitted to engage part time workers on daily basis in case of any urgency and they were required to be paid in accordance with the hours they worked. There is a procedure for appointment and promotion of officers and other employees in Rural Banks mentioned in the Rules of 1998. The workman was employed in the Branch as a daily wager on purely temporary basis for maximum four hours a day. He was paid his wages on the basis of rates decided by the Collector. He never served continuously for 240 days in any year. The Management has given a chart in page seven of the written statement of defense showing the number of working days the workman worked in the year since 1989 to 6-3-1999. Hence, according to the Management the dis-engagement of workman is not in violation of any provisions. Accordingly the Management has requested that the reference be answered against the workman.
4. In spite of various opportunities given to the workman for producing evidence from his side to file his affidavit but never turned up for cross-examination by Management. Hence closing his evidence, vide order dated 9-9-2021, the management was given opportunity for evidence from its side. The management filed affidavit of its witness Anand Kumar Dewangan as his Examination-in-Chief. The workman did not turn up for cross-examination of this witness. Hence opportunity of the workman for cross-examination of this witness was closed.
5. The workman did not appear at the time of argument. He did not file any written argument. I have gone through the record.
6. **The Reference is the issue for determination in the case in hand.**
7. The burden to prove his continuous engagement for 240 days in a year lies on the workman. He has filed his affidavit as his Examination-in-Chief but never turned up for cross-examination, hence his affidavit

cannot be read in evidence, in his favour. On the other hand, there is affidavit of Management witness as his Examination-in-Chief, specifically stating that the workman was a daily wage casual labour engaged on daily basis and was engaged for few hours in a day and was paid according to the rates and wages fixed by the Collector. The witness also stated that the workman never completed 240 days in engagement in any year from 1989 to 1999. This statement of Management witness is un-cross-examined, hence cannot be dis-believed.

8. In these circumstances, holding that the workman could not prove his case, the reference deserves to be answered against the workman, holding his dis-engagement legal and proper. The workman is further held entitled to no relief.

9. On the basis of the above discussion, following award is passed:-

A. The action of the management of Bilaspur-Raipur Kshetriaya Gramin Bank, Bilaspur in engaging Shri Ram Swaroop Jaiswal for a decade from 1989 to 1999 although intermittently and thereafter dis-engaging him held to be just and proper.

B. The workman is held entitled to no relief.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 16/6/2022

P.K. SRIVASTAVA, Presiding Officer